LEGISLATIVE PROPOSALS TO COUNTER TERRORISM AND ILLICIT FINANCE

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

AND THE

SUBCOMMITTEE ON TERRORISM AND ILLICIT FINANCE

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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LEGISLATIVE PROPOSALS TO COUNTER TERRORISM AND ILLICIT FINANCE

Wednesday, November 29, 2017

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT, AND
SUBCOMMITTEE ON TERRORISM AND ILLICIT FINANCE,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittees met, pursuant to notice, at 2:26 p.m., in room 2128, Rayburn House Office Building, Hon. Stevan Pearce [Chairman of the Subcommittee on Terrorism and Illicit Finance] presiding.

Present: Representatives Pearce, Pittenger, Rothfus, Royce, Tipton, Williams, Poliquin, Love, Hill, Zeldin, Trott, Loudermilk, Davison, Budd, Kustoff, Tenney, Hensarling, Perlmutter, Maloney, Velazquez, Lynch, Scott, Green, Himes, Foster, Kildee, Delaney, Sinema, Heck, Vargas, Gottheimer, and Waters.

Chairman PEARCE. The subcommittees will come to order.

Without objection, the Chair is authorized to declare a recess of the subcommittees at any time. Members of the full committee who are not members of the Subcommittees on Financial Institutions and Consumer Credit, or Terrorism and Illicit Finance may participate in today's hearing.

All members will have 5 legislative days within which to submit extraneous materials to the Chair for inclusion in the record.

This joint hearing is entitled "Legislative Proposals to Counter Terrorism and Illicit Finance." I now recognize myself for 2–1/2 minutes to give an opening statement.

I want to thank everyone for joining us today. Today's joint hearing will examine legislative proposals to combat money laundering, terrorist financing, human trafficking, and other illicit activities within our financial system.

Nearly 50 years old, the Bank Secrecy Act (BSA) was designed and passed before the emergence of the common technology we take advantage of today. From the very basic, like how a currency transaction report (CTR) is filed, to the extremely complex, including what information is most useful to the U.S. Financial Intelligence Unit, the BSA framework needs modernization.

The Office of National Drug Control Policy estimates that Americans spend over $65 billion per year on illegal drugs, yet seizures by law enforcement are less than $1 billion a year. Overwhelmingly, the proceeds from drug trafficking escape detection in the U.S. financial system.

To be clear, this issue is not created by a lack of effort from law enforcement or financial institutions. In fact, we spend billions of dollars annually on AML/CFT (anti-money laundering/combating the financing of terrorism) efforts. Illicit finance is ever changing and ever evolving, which requires financial institutions and law enforcement to detect new methods in a fluid environment where every action from law enforcement is countered by criminals.

The solution is providing these entities with the tools they need to better detect, report, and pursue illicit activity. This includes modernizing the current framework to ensure that emerging forms of financial technology can be secure and accountable and that Treasury's Financial Crimes Enforcement Network (FinCEN) can utilize the same technology to streamline regulatory and intelligence work.

As it stands today, the current AML/CFT compliance regime is a practice and procedures whose policy, goals, supervision, and enforcement need more clarification and coordination to prevent undue regulatory burden on financial institutions while strengthening national security interests and enhancing law enforcement investigations. Reporting under the BSA was meant to provide information to law enforcement that is of a high degree of usefulness. However, in 2016 alone, over 15 million currency transaction reports and over 1.5 million suspicious activity reports were filed with the Federal Government. This influx of reports drowns out the actionable information with white noise, allowing criminal activity to go undetected.

Without a serious review and modernization of anti-money laundering, the AML/CFT, combatting the financing of terrorism framework, the United States will continue to be deficient in its ability to combat terrorism, terror, and illicit financing.

The Counter Terrorism and Illicit Finance Act is a legislative proposal compiled after over 10 months of hearings, briefings, and feedback from stakeholders, academics, and Administration officials from two subcommittees of jurisdiction. It identifies the current weaknesses in how the AML system operates and includes reforms designed to promote innovation and detection strategies, establish AML and counterterrorism financing priorities, identify ownership of shell companies, and streamline reporting requirements.

The consequences of money laundering are significant to financial systems, economic development, and governments worldwide. As criminals invent new methods of moving illicit funds through our financial system, settling for the status quo is unacceptable.

Delaying these reforms puts American lives at risk from drug cartels, human traffickers, organized crime, and terrorism. In today's hearing, I hope our witnesses can discuss how we are currently combatting terrorism and illicit finance and how the legislation before us will improve the existing system.

I would also welcome any feedback on how to improve the reforms proposed in Counter Terrorism and Illicit Finance Act. Inhibiting criminal activity isn't a new problem, but I hope that today we can help inform the subcommittees on the importance of reforming the current law.

Again, I would like to thank our witnesses for being here today, and I look forward to their expert testimony on this important issue.

I now recognize the Ranking Member of the Terrorism and Illicit Finance Committee, the gentleman from Colorado, Mr. Perlmutter, for 2–1/2 minutes for an opening statement.

Mr. PERLMUTTER. Thanks, Mr. Chair, and thanks for having this hearing.

And to our panelists, thanks for being here today.

This is a subject we have been studying pretty thoroughly. I think we all understand that we need to make some changes and to modernize some statutes that have been in place since the '70s and the '80s. We don't want the financial institutions to make work, go through certain routines that really don't help us as a Nation stop crime, stop terrorism. There are benefits to it, but we can be much more effective with a lot less routine work. And that is really what this committee would like to see done, and that is why we are going to be taking up the bill at some point that Mr. Pearce just mentioned, Counter Terrorism and Illicit Finance Act.

So I'm very interested in your testimony today. A belief by both sides of the aisle that we have steps that need to be taken. I would encourage the panel, and I ask you to take a look at a couple of sections that I am going to want information about, which is the expansion of the crimes for which there would be information-sharing.

We have a letter from the Defense Bar, which I would ask to enter into the record, complaining about—

Chairman PEARCE. Without objection.

Mr. PERLMUTTER. —the pretty dramatic expansion of the crimes covered, as well as the section that Mrs. Maloney has been suggesting on beneficial ownership. And we have a couple of letters that I would ask to be entered into the record: One by Angel Capital Association, which is joined in by the National Association of Manufacturers, NFIB, National Venture Capital, and Real Estate Roundtable, and the Chamber of Commerce as one of the letters. The other being the letter from the Bar Association—

Chairman PEARCE. Without objection.

Mr. PERLMUTTER. —complaining about what they believe are a lot of limitations, a lot of confusion in terms of definitions, and also changing the risks from the banking community to the legal community.

But I appreciate all of you being here today; look forward to your testimony.

And, with that, I would yield back to the Chair.

Chairman PEARCE. The gentleman yields back.

The Chair now recognizes the Vice Chairman of the Financial Institutions and Consumer Credit Subcommittee, the gentleman from Pennsylvania, Mr. Rothfus, for 2–1/2 minutes, for an opening statement.

Mr. ROTHFUS. Thank you, Chairman.

I want to commend my colleagues on this committee for their efforts on the bills that we are going to discuss today.

Strengthening and modernizing our Bank Secrecy Act anti-money laundering framework is essential if we want to counter the

very real security threats that we face and disrupt the heartbreaking human trafficking and drug trades that destroy so many lives.

Just before we went home to spend time with our families this Thanksgiving, I traveled through Afghanistan and Iraq to visit our troops and get a firsthand update on the challenges we face in that part of the world. The flow of illicit cash, whether generated through the sale of drugs or weapons, bogus trade transactions, or through human trafficking, continues to provide a lifeline for terrorist groups and rogue actors. This fuels instability throughout the Middle East, and it makes the jobs of the brave men and women of our military much harder.

Of course, as many of us know, this problem extends far beyond that part of the world. Bad actors, like Hezbollah, are involved in illicit finance and trafficking all over the world, including in Africa and closer to home in Latin America. The violence and corruption that they support in the countries in which they operate is unacceptable. And the drugs they pump into our communities, which ruin so many lives, need to be stopped.

I am more convinced than ever that this committee's efforts to interrupt the finances of these bad actors will ultimately save lives. These bills, and especially the Counter Terrorism and Illicit Finance Act, represent a promising start as we begin this process.

I am looking forward to hearing from our witnesses today about how we can build on a more potent BSA/AML regime that makes the best use of scarce public and private sector resources. It is clear to me that our existing framework puts heavy burdens on financial institutions and appears to emphasize compliance with rigid standards over efficacy. This imposes a significant cost on financial institutions and takes resources away from other important functions. We need to be looking at how technology, innovation, and greater cooperation can be employed to yield better results in this fight.

I thank the Chairman. I yield back.

Chairman PEARCE. The gentleman yields back.

The Chair now turns to the introduction of our witnesses. We welcome the testimony of, first of all, Mr. Daniel Bley. Since 2010, Mr. Bley has been Executive Vice President and Chief Risk Officer at Webster Bank Financial Corp. and Webster Bank, based in Waterbury, Connecticut.

Prior to joining Webster, Mr. Bley worked at ABN AMRO and the Royal Bank of Scotland from 1990 to 2010, having served as managing director of financial institutions, credit risk, and group senior vice president, head of financial institutions and trading credit risk management.

Mr. Bley earned a B.A. from the University of Michigan in Ann Arbor and an MBA from London Business School in London, England. Mr. Bley also served on the board of directors of Junior Achievement of Western Connecticut.

Mr. John Byrne. Mr. Byrne is the President of Condor Consulting in Centreville, Virginia, the financial services regulatory firm handling due diligence issues and training for Government and the private sector in anti-money laundering, financial crime, and regulatory oversight. From 2010 to October 2017, Mr. Byrne was the Executive Vice President of the Association of Certified

Anti-Money Laundering Specialists, the largest and most prominent global AML Trade Association. Mr. Byrne has also held several senior positions at Bank of America in Washington, D.C., with responsibilities in AML strategies and regulatory relations. Mr. Byrne earned a B.A. degree from Marquette University in Milwaukee and his law degree from George Mason University.

Mr. William J. Fox serves as Managing Director of Global Financial Crimes, Corruption, and Sanctions at Bank of America Corporation. Mr. Fox has served at Bank of America since 2006. Mr. Fox joined Bank of America from Financial Crimes Enforcement Network, FinCEN, where he served as the FinCEN Director. Prior to his of appointment as FinCEN Director, he served as the Treasury's associate deputy general counsel, acting deputy general counsel. After September 11, 2001, he also served as the principal assistant and senior advisor to the Treasury's general counsel on issues relating to terrorist financing and financial crime. He was recognized for his work on those issues with a meritorious rank award in 2003. Mr. Fox joined the Department of the Treasury in December 2000 as the acting deputy assistant general counsel for enforcement. From 1988 to December 2000, he served at the Bureau of Alcohol, Tobacco, and Firearms. Mr. Fox received his bachelor's degree in history and a law degree from Creighton University in Oklahoma.

Stephanie Ostfeld is the Deputy Head of the U.S. Office of Global Witness. Global Witness is an international nonprofit established in 1993 that examines corruption, poverty, and human rights. During her time at Global Witness, Ms. Ostfeld has focused on corporate transparency, anti-money laundering law, and the effective enforcement of antibribery and AML law in the oil, gas, and mining sectors. Ms. Ostfeld also served on the executive committee of the Financial Accountability and Corporate Transaction Coalition. Ms. Ostfeld has also served as senior policy adviser at the Global AIDS Alliance and the American Jewish World Service. Ms. Ostfeld earned a bachelor of science degree in engineering from the University of Pennsylvania and a master's degree in human rights from the University of Denver.

Mr. Chip Poncy is the President and Cofounder of the Financial Integrity Network. FIN is a strategic and technical advisory firm dedicated to assisting its clients around the world achieve and maintain the financial integrity needed to succeed in today's global economy and security environment. Chip Poncy also serves as senior adviser of the Center on Sanctions and Illicit Finance, CSIF, at the Foundation for Defense of Democracies. From 2002 to 2013, Mr. Poncy served as the inaugural director of the Office of Strategic Policy for Terrorist Financing and Financial Crimes, OSP, and a senior adviser at the U.S. Department of the Treasury. As a senior adviser from 2002 to 2006, Mr. Poncy assisted Treasury leadership in developing the U.S. Government's post-9/11 strategy to combat terrorist financing.

Mr. Poncy graduated with honors from Harvard University and Johns Hopkins School of Advanced International Studies, and he holds a juris doctor from the Georgetown University Law Center.

Each of you will be recognized for 5 minutes to give an oral presentation of your testimony.

Without objection, each of your written statements will be made a part of the record.

And, Mr. Bley, you are recognized for 5 minutes.

STATEMENT OF DANIEL H. BLEY

Mr. BLEY. Chairmen Luetkemeyer and Pearce, and members of the subcommittees, thank you for the opportunity to present testimony on the need to modernize and improve the Bank Secrecy Act. I am Daniel Bley, Chief Risk Officer of Webster Bank, founded in 1935 and headquartered in Waterbury, Connecticut. Webster has $26 billion in assets and serves communities throughout New York and New England.

Today, I am representing the Mid-Size Bank Coalition of America, the voice of 83 banks with headquarters in 34 States. MBCA banks are primarily between $10 billion and $50 billion in assets and support customers through more than 10,000 branches in all 50 States. MBCA members maintain combined deposits in excess of $1.2 trillion and are typically the largest local banks serving the basic banking needs of communities.

The Bank Secrecy Act is amongst the most complicated and costly requirements with which a bank must comply, and it is one of the highest priorities for mid-size banks. MBCA banks deeply appreciate the importance of this regulation and our role in helping law enforcement identify and shut down illicit financial activity.

We are committed to ensuring a successful program that reduces financial crime and protects our customers and our banks. To this end, MBCA banks have collectively invested well over a half a billion dollars in technology and are on average estimated to each spend upwards of $8 million annually on staff and support.

Nearly all of the larger MBCA banks are using or are moving into more sophisticated technology for detecting suspicious activity well beyond the previous tools.

The high cost is particularly concerning for mid-size banks that have significantly less scale than the large banks against which to spread these costs. MBCA applauds the idea as introduced with this bill and believes it will improve the program, benefiting businesses, consumers, law enforcement, and banks.

And I would like to share our perspectives on four key components. Reporting thresholds, the proposed review of efficiency and effectiveness; changes to beneficial ownership; data collection; and the role of Treasury.

The proposed change in reporting thresholds would be immediately and positively impactful for increasing information usefulness and reducing burden.

We estimate, if implemented, the SAR (suspicious activity report) filings at mid-size banks would reduce by 8 to 10 percent, and CTR filings by 50 to 80 percent. Together, this translates to an estimated 8 to 10 percent of BSA's staffing costs that are working solely on the half a million small dollar reports that are estimated to be filed by mid-size banks annually.

Section 3 focuses on improving the process. And we believe all of the ideas included would achieve the objective. MBCA members are happy to share other specific ideas as well.

One such idea is to establish a more structured or automated template with limited free text format. This would reduce complexity and could lower preparation time by potentially half or more without sacrificing usefulness. Another idea is to create a shorter form automated filing approach for small dollar reports.

One concerning fact to be considered with this review is that the false positive alert rate for mid-size banks is estimated at over 90 percent, meaning detailed reviews of an excessively high number of transactions that are ultimately deemed to be unimportant. The proposed change to the beneficial ownership data gathering model is necessary as the existing regulation effective in May 2018 is suboptimal in many ways. It allows for uneven application. It creates data integrity risks, and it puts unnecessary burden on businesses to supply data to multiple institutions. The proposed public-sector-led approach efficiently solves for these challenges.

MBCA banks appreciate the introduction of the expanded role of Treasury in steering supervision and support for innovation. This could increase transparency and consistency, elements that are critically needed. We hope this will also help reintroduce the risk-based approach to supervision that has been missing in recent years, even though it is captured in the existing act.

We believe better solutions can be built if there was more coordination between Treasury, law enforcement, regulators, and the financial institutions.

In summary, MBCA members appreciate and support this thoughtful bill. It successfully addresses the most important challenges in the current act, and it makes it better. It will benefit individuals and businesses, will strengthen law enforcement efforts with better information, and will reduce burden for banks so we can better serve our customers.

Thank you again for the opportunity to testify, and I am happy to address any questions or concerns of the committee's interest.

[The prepared statement of Mr. Bley can be found on page 46 of the Appendix.]

Chairman PEARCE. Thank you.

Mr. Byrne, you are recognized for 5 minutes.

STATEMENT OF JOHN J. BYRNE

Mr. BYRNE. Chairman Pearce and members of the subcommittees, I am John Byrne, and I have been part of the AML community for over 30 years. It is clear to me that the private and public professionals who have financial crime prevention functions are all dedicated to stopping the flow of illicit funds.

We may disagree with how to achieve this collective goal, but no one can challenge the commitment of all of those involved. It is, therefore, so important that, as improvements are considered to what constitutes the AML infrastructure, all participants be actively consulted.

I have seen all too often that the focus of the Bank Secrecy Act appears to be mainly regulatory compliance and not getting immediate access to law enforcement, information they need for investigations and deterrence of criminal abuse of our financial system.

I have covered many of the provisions in today's proposal in my testimony, but I will highlight only a few.

Sections 2 and 3. CTRs have been part of the AML fabric since 1972 and SARS since 1996. There was certainly value for law enforcement in both reporting regimes, but I feel that SARS are, without a doubt, more essential to successful investigations, prosecutions, and overall detection of financial crime. The subcommittee should be commended for attempting to review and improve these requirements.

I would respectfully recommend, however, that there are elements in both reporting regimes beyond the dollar thresholds that should be considered for improvement, and they are identified in my testimony.

While I respect Mr. Bley's views that he just espoused, in discussing the ideas of raising the threshold on CTRs, I talked to a number of institutions who said that, for them, it may have little impact on burden because automated systems have been implemented to assist in the identification of reportable transactions.

I do not have enough data on all impacted filers to assess the pros and cons of raising the thresholds. So, if the subcommittees intend to propose such a plan, I would encourage that all participants in the filing process, especially law enforcement stakeholders, be included in discussions around any potential change.

However, to both simplify and ensure law enforcement utility, I would submit there is a need for a new call to dramatically change cash reporting, and that is, eliminate all CTRs and have impacted financial institutions report cash activity directly to FinCEN. With this change, law enforcement would get direct access to cash activity at the levels decided by Congress with input, obviously, from law enforcement, and they could develop metrics on what activities, types, and other factors are important to the detection of all aspects of financial crime. It is clear to me that a change this massive couldn't be done overnight. So creating several pilot programs may be the best option.

The subcommittees are also looking at suspicious activity reporting thresholds and adjusting those. I will leave to current members of the financial sector to comment, but I will say this: Many banks file SARS in the hopes that law enforcement will actually start an investigation. If the dollar amounts are raised, will there be less consideration to lower dollar frauds and financial crime? Also, as we know from our law enforcement partners, terrorist financing models have often occurred at extremely low dollar amounts, and so will we be losing valuable financial intelligence?

Section 4. The subcommittees are also to be commended for the inclusion of section 4 that fixes a long-held barrier to enhancing information sharing. This is a welcome expansion and should result in more effective reporting and eventual detection of many forms of financial crime.

Sections 5 through 7, on the no-action process, I think that will go a long way, if you create that, to prevent what I would call "policy as rule" that I talk about in my testimony. So that section, I think, deserves a lot of support.

Section 7 highlights the use of technology. And several members have referenced that already today. One of the common complaints

I have heard is that, all too often, regulators make it difficult for financial institutions to experiment with new tools for the fear of regulatory criticism during transitionary periods. This section may alleviate those problems.

Section 9. One of the major recent challenges to the financial sector is the impending CDD (Customer Due Diligence) Rule that is required to be implemented next May. With the focus from FATF (Financial Action Task Force) and the media outcry from the Panama and Paradise Papers, we know that there is universal focus on the mechanisms used to obscure beneficial ownership of corporate vehicles. A direct obligation to file with FinCEN is indeed a welcome proposal.

And then, last, I would be remiss if I did not also reference the collateral damage that can and does occur with confusion regarding risks in today's AML regime. When the financial sector receives limited advice and counsel regarding how best to manage risk, the logical response by some institutions is to exit or not onboard certain classes of customers. This concept, "derisking," impacts access to the traditional banking sector and has harmed victims in conflict zones from receiving funding for water, utilities, and other resources.

These subcommittees can provide a valuable service to the AML and global communities by adding to the studies and reports in the bill an update to the challenges regarding financial access.

In conclusion, I would thank the subcommittee for this opportunity to offer my views on the need to change after 30 years of AML. The key to going forward is to, whatever changes are made, ensure that improvements occur through private/public partnerships.

Thank you for this opportunity, and I am also happy to answer any questions.

[The prepared statement of Mr. Byrne can be found on page 50 of the Appendix.]

Chairman PEARCE. Thank you.

Mr. Fox, you are recognized for 5 minutes.

STATEMENT OF WILLIAM J. FOX

Mr. FOX. Thank you, Mr. Chairman, and Ranking Member Perlmutter, thank you very much, and distinguished members of the subcommittee. I really am proud to be here today on behalf of The Clearing House, where I serve as the Chair of its AML Summit Committee. I have a few remarks that I would like to make to the subcommittees this afternoon.

First of all, we would like to commend the House Financial Services Committee and the subcommittees that you chair on your leadership regarding our Nation's anti-money laundering and counter financing of terrorism regime, a regime that we believe is critical to our national security.

The enactment of the USA PATRIOT Act more than 16 years ago was the last time that the Congress conducted a broad review or adopted significant amendments to our national regime. The current suspicious activity reporting regime remains largely unchanged since it was developed in the mid 90s. Similarly, large

cash reporting regime remains largely unchanged, if not unchanged at all, since the Bank Secrecy Act was originally passed or enacted in 1970.

Just think of what's happened since that time. Today, most banking business can be conducted from your mobile phone. Both money and information move in nanoseconds.

It is very simple and common to move money across borders in ways never seen before. Even the concept of what money is, is changing. Today, anonymous cryptocurrencies are traded outside the formal financial system in a way that makes it increasingly difficult to know the source and purpose of the funds that have been moved.

The Clearing House believes that the mechanisms through which our member institutions discharge their responsibilities under the regime are highly inefficient and outdated. We believe it is time to take a fresh look. A core problem with the current regime is that it is geared toward compliance expectations that bear little relationship to the actual goal of preventing or detecting financial crime. These activities require different skill sets, tools, and work. All of this begs a question: What is the ultimate desired outcome of our Nation's AML/CFT regime in a post-September 11th–2017 world? The Clearing House believes we should start by defining clear and specific measurable outcomes or goals for each component of our national regime, including the anti-money laundering programs that exist in financial institutions.

Progress toward achievement of these goals should be measured and reported. From these outcomes or goals, priorities should be set for the components of the regime, similar to the prioritization that occurs in our intelligence community. We believe defining and measuring desired outcomes would change the focus in financial institutions from one that is focused on technical compliance to one that is focused on achieving desired and measurable outcomes of the regime. In other words, the programs will be effective.

To that end, in early 2017, The Clearing House issued a report offering recommendations on redesigning our national regime to make it more effective and efficient. Many of the concepts found in the report are reflected in the Counter Terrorism and Illicit Finance Act before the subcommittees today.

I will quickly go through a couple of the recommendations that The Clearing House is making.

First, relating to prioritization. The Clearing House believes that the Treasury should take a preeminent role in setting policy, measurable outcomes, coordinating and setting priorities, as well as in examining institutions' compliance with and enforcing our national regime.

Treasury is uniquely positioned to balance the sometimes conflicting interests relating to national security, the transparency and efficacy of our global financial system, the provision of highly valuable financial intelligence to the right authorities, financial privacy, financial inclusion, and international development.

Second, regarding rationalization, The Clearing House supports the draft legislation study of current BSA reporting requirements. Enhancements to information sharing and enterprise-wide sus-

picious activity information sharing, as well as the exclusion of a Federal beneficial ownership recordkeeping requirement.

Due to our size and geographic footprint, at Bank of America, we are one of the largest filers of currency transaction reports and suspicious activity reports in the United States. Other than anecdotes about the usefulness of our reporting, we do not receive direct feedback from the Government on whether the bulk of our reporting is useful or not. At Bank of America, in order to try to measure the usefulness of our reporting, we have developed a metric tracking when we get follow-up requests from law enforcement or regulatory agencies for backup documentation relating to our reports.

Today, we receive such requests in connection with roughly 7 percent of the suspicious activity reports that we file. From my time in the Government, I know that these reports are used in many different ways. Most of which do not require the backup documentation that you can get through the SAR process. Accordingly, I think our reporting is far more effective than the metric would say. However, I do not know that for sure.

Measuring the usefulness of suspicious activity reporting would also help the Government rationalize whether the reporting, which may be technically required under the law, is ultimately useful in achieving the goals of our AML/CFT regime. We are pleased to see the draft legislation would require a Treasury-led study to review the current reporting regimes under our AML/CFT regime, and we believe that that is really important.

The third area we would like to cover is innovation. The Clearing House supports the language in the draft bill encouraging innovation. We have some ideas in our testimony, and we have covered that pretty well there.

With that, Mr. Chairman, we are ready to take questions.

[The prepared statement of Mr. Fox can be found on page 58 of the Appendix.]

Chairman PEARCE. Thank you, Mr. Fox.

Ms. Ostfeld, you are recognized for 5 minutes.

STATEMENT OF STEFANIE OSTFELD

Ms. OSTFELD. Thank you. Good afternoon, Chairman Pearce, Ranking Member Perlmutter, and the distinguished members of the subcommittees. Thank you for holding this important hearing and inviting Global Witness to testify.

We are an investigations and advocacy organization that seeks to expose and break the links between natural resources and corruption and conflict. For the last 6 years, with Global Witness, I have been looking at how illicit funds flow through the system. And there are three things that have really struck me.

Now, the first is that, in basically every case of corruption we have ever investigated, anonymously owned companies have been used to move and hide money. The second thing I have noticed is it is not just corruption. Anonymously owned companies are what unite all crimes that generate money. But perhaps what is most striking is how easy and common it is to set up an anonymously owned company right here in the United States. We are at the heart of this problem.

Global Witness is very encouraged that the committee is interested in advancing beneficial ownership legislation and strengthening U.S. anti-money laundering laws. A bill that is fit for purpose needs to collect the right information, make it accessible to the stakeholders who need it, and ensure that the beneficial ownership information is kept up to date.

The discussion draft did some of this, but we have a number of concerns. So my written testimony concerns 14 detailed recommendations of how you could strengthen the proposed legislation, but I am going to use the remainder of my time to briefly discuss seven of them.

So, first, with respect to section 9, the discussion draft favors bank's access to beneficial ownership information while severely limiting domestic law enforcement's access, because it only allows Federal law enforcement to access beneficial ownership through a criminal subpoena. This means State and local law enforcement do not have direct access to it, even though the bulk of U.S. criminal investigations happen at the State and local level. It also means that Federal agencies that only have civil and administrative subpoenas aren't able to access it either.

Law enforcement officers need to be able to acquire company ownership information quickly and easily without alerting the subjects of the investigation.

The bill needs to ensure domestic law enforcement has access, and this includes Federal, State, and local, to FinCEN's database of beneficial ownership information. At a minimum, the language in the discussion draft needs to be amended to allow civil, criminal, or administrative subpoenas or summons or the equivalent at the State, local, and Federal level.

Second, the discussion draft also severely limits foreign governments access to beneficial ownership information. It excludes cases that involve civil misconduct, like securities violations, business misconduct, patent and copyright violations, cybersecurity violations, but it also goes a step further, that there is language in the discussion draft that will severely limit its utility to foreign governments when they are trying to access beneficial ownership information. It means they can only access it for an intelligence purpose and not for a law enforcement purpose. For it to serve the law enforcement purposes of foreign governments, beneficial ownership information needs to be able to be introduced in court. This means it could be discoverable at a later date. As written, it appears to prevent this. It has little utility to a foreign prosecution.

Third, the discussion draft appears to favor foreign owners over U.S. applicants. It must require foreign nationals to file their beneficial ownership information with FinCEN, and this needs to include submitting a scanned copy of the relevant pages of their nonexpired passport to FinCEN.

Fourth, an enforcement mechanism should be added to the discussion draft to ensure that applicants file beneficial ownership information with FinCEN. As written, it doesn't have one.

Fifth, banks should implement the customer due diligence rule on time in May 2018. There is a clearly identified need for banks to be collecting beneficial ownership information for their customers so that they can assess risk. If this proposed legislation be-

comes law, regardless of how long Congress gives FinCEN to set up the database, it is going to take a significant amount of time to get it up and running and populated with the required beneficial ownership information. Adequate customer due diligence within banks, which is what the regulation requires, cannot stop in the interim because the banks need to know its customer does not stop.

Sixth, the CTR and SAR reporting threshold shouldn't be raised as proposed in the legislation as it would create a record-free zone for a much larger number of transactions. It would lift the burden on wrongdoers, like drug traffickers and terrorists, who must deal in cash, while doing very little or nothing to relieve any burden on legitimate commerce.

And, seventh, finally, while banks play an important role in keeping dirty money and terrorist finance from entering the U.S. financial system, they shouldn't be alone in bearing that responsibility. Those seeking to move suspect funds utilize the services of a wide range of professional gatekeepers to the financial system who handle large sums of money. Company formation agents, the real estate sector, and transactional lawyers should also be required to know with whom they are doing business and engage in efforts to prevent their services from being used to launder dirty money.

So thank you for inviting me to testify today and share my views on this important issue. Global Witness looks forward to working with you and your colleagues on the subcommittees to strengthen U.S. anti-money laundering framework so we can stop the U.S. from being a safe haven for illicit money and terrorist financing from around the world. Thank you.

[The prepared statement of Ms. Ostfeld can be found on page 69 of the Appendix.]

Chairman PEARCE. Thank you.

Mr. Poncy, you are recognized for 5 minutes.

STATEMENT OF CHIP PONCY

Mr. PONCY. Thank you, Chairman Pearce, Ranking Member Perlmutter, and distinguished subcommittee members. I am honored to testify before you today.

We are confronting a pivotal moment in our 48 years of combatting illicit finance under the Bank Secrecy Act, more commonly known as the BSA. As our counter illicit financing efforts have become more important, they have also become increasingly challenged. This is provoking fundamental questions, including about effectiveness, efficiency, costs, roles, and responsibilities. The combination of these developments necessitate significant reform of the BSA and the expanded AML/CFT regime it supports.

This hearing marks an important and welcome opportunity to discuss how best to pursue such reform. I am grateful for the leadership of these subcommittees in addressing these issues for the reasons that my colleagues here have spoken.

The draft Counter Terrorism and Illicit Finance Act proposes bold and necessary changes required to address many of the urgent challenges we face, challenges in combatting all forms of illicit financing, and in protecting the integrity of our financial system and

our national security. Such proposed legislation also reflects the congressional leadership required to take action to secure these vital interests.

However, Congress should amend this proposed legislation to further strengthen the effectiveness and to further promote the efficiency of our AML/CFT regime. My recommendations for such amendments are explained at length in my written testimony and may be summarized as follows.

One, incorporate into the proposed legislation a new section expanding the objectives of the BSA to explicitly include protecting the integrity of the financial system and protecting our national security. Such clarification of purpose will recognize the heightened importance of what we do through our AML/CFT regime and will help guide our efforts moving forward.

Two, incorporate into the proposed legislation a new section, first, to restructure and enhance financial investigative expertise at the Department of the Treasury and, second, to provide protected resources to law enforcement, the intelligence community, and counter illicit financing targeting authorities. Such action is required to more effectively and consistently pursue illicit financing networks. It is also necessary to fully capitalize on the investments that our financial institutions are taking to support these efforts.

Three, strengthen section 3 of the proposed legislation to direct a more aggressive approach for Treasury to enhance financial transparency. Such action is required to address longstanding and substantial vulnerabilities in our financial system. Such actions are also necessary to fully leverage new technologies and providing more information at a lower cost to our financial institutions.

Four, strengthen and expand the information-sharing provisions in sections 4 and 7 of the proposed legislation. This action will enable our best financial investigators from the Government to work directly with our best analysts in the industry to attack illicit financing networks.

Five, strengthen section 6 of the proposed legislation by directing Treasury to develop and expand initiatives and consultations with industry. Such initiatives and consultations should inform priorities for U.S. policies across the full spectrum of combatting illicit finance, money laundering, terrorism financing, sanctions compliance, bribery, and corruption.

Such consultation should also stimulate operational pilots to capitalize on expanded information-sharing authorities and capabilities.

Six, amend section 9 of the proposed legislation to support urgent implementation of the Treasury CDD Rule while supporting urgently the adoption of company information reform. Both of these actions are essential to our national security. This has been discussed at length through two decades of testimony, including in front of this committee. It is not an option to pursue company information reform or customer due diligence by financial institutions. For reasons that have been elaborated at length in my testimony and from testimony from others for decades, both of those actions are necessary. I am very happy to take questions on that issue.

I would like to close with a word of thanks to all of you, to my friends, partners, colleagues across the AML/CFT community, and

to my family. My family has given me the freedom to contribute to this mission, both in Government and in private practice. Finally, I would like to recognize and welcome Maddy Poncy, an 11-year old reporter from the Hunters Wood Elementary School, and urge her to continue to educate the next generation about the importance of public service.

Thank you.

[The prepared statement of Mr. Poncy can be found on page 88 of the Appendix.]

Chairman PEARCE. Thank you. The Chair now recognizes the Ranking Member of the full committee, the gentlelady from California, for 2–1/2 minutes for comment, opening statement.

Ms. WATERS. Thank you very much for convening today's hearing and for the opportunity to discuss two proposals. One that sharpens the Nation's focus in countering human trafficking, and another that would make broad reforms in an effort to modernize the Bank Secrecy Act. This latter proposal aims to achieve two important objectives: One, strengthen the efficacy of our current anti-money laundering framework and, two, reduce any undue compliance burdens.

These are worthy objectives and are reflected in a number of important provisions in the bill, including sections that would address vulnerabilities associated with anonymous shell companies and provide financial institutions with greater feedback. Nonetheless, a number of other provisions in the discussion draft fail to strike the appropriate balance and warrant additional scrutiny.

In particular, while compliance issues that community banks and credit unions face is an important consideration, we should, for example, be careful not to lift SAR and CTR reporting thresholds if doing so undermines law enforcement's ability to stop bad actors. Similarly, while the no-action letter concept and encouragement of the use of technology may provide welcome clarity for institutions, these provisions need to be more carefully scoped to minimize potential harm. Additional care must also be given to address privacy and civil liberties concerns before altering the information-sharing powers under the PATRIOT Act. Finally, more must be done to close other known vulnerabilities and our anti-money laundering rules, especially in the real estate sector.

So I look forward to the opportunity to working collaboratively to perfect these missions. And I thank you so much, Mr. Chairman.

And I yield back my time.

Chairman PEARCE. The gentlelady yields back.

We turn now to questions, and the Chair now recognizes himself for 5 minutes for questions.

Mr. Byrne, in the testimony before the Senate Judiciary Committee yesterday, the Assistant Attorney General Kenneth Blanco stated that "the pervasive use of front companies, shell companies, nominees, and other means to conceal the true beneficial owners of assets is one of the greatest loopholes in this country's AML regime." The Financial Action Task Force in its December 2016 evaluation of the United States anti-money laundering efforts identified the lack of requirement for the collection of beneficial ownership information as the most critical vulnerability in our efforts to combat money laundering and illicit finance. This law has allowed crimi-

nals to hide their identities and abuse our financial system through anonymous shell companies. So the rest of the world is addressing the question far more thoroughly than we are. Is our country, the United States, at risk of becoming the haven for criminals?

Mr. BYRNE. I don't think there is any question, Mr. Chairman, that the lack of information gathering that currently exists is more than problematic.

I think we have always talked about—and Chip alluded to this in his testimony—we have talked about this in terms of the CDD Rule being one part of this and beneficial ownership part of that being separate. The fact that we have States in this country where corporate formation information is so limiting I think does make it much easier to create these shell organizations and these front companies. So I do think—and I think the FATF is focused on that as well. So I think the fact that this subcommittee—these subcommittees are looking at making those adjustments, that there is a rule that is pending, will go a long way toward helping that, but it does, as an AML professional, it does concern me about the ease in which corporate formations issues can occur in the States to be fronts for illegal activity. Absolutely.

Chairman PEARCE. How is the information used by law enforcement if this beneficial ownership information is provided?

Mr. BYRNE. How is?

Chairman PEARCE. How is that information used by law enforcement? What are the processes? What do they use it for?

Mr. BYRNE. Well, for investigative purposes, to follow up. I would certainly defer to some of my other panelists. But I think there is a long history of law enforcement saying they need that information. And I know that the FBI and other organizations have come before this subcommittee and others to say how important it is to get access, more access to that information.

Chairman PEARCE. All right.

Mr. Bley, in your testimony, you mentioned the CDD Rule that goes into effect next May. And you comment that it is going to place unnecessary burden on our businesses, would slow the account-opening process, and would increase maintenance costs.

Can you explain some of the negative impacts on businesses from a CDD Rule and describe how our proposal would help alleviate those burdens while still ensuring law enforcement has the information they need?

Mr. BLEY. Absolutely. There is an agreement amongst all the mid-size banks that collection of this data could add value from a law enforcement perspective. And the real question is just what is the most efficient way in which that information should be gathered, most efficient, not just for banks but also for all the businesses throughout the country. And we believe the public sector approach is the most efficient because it allows for better data integrity, a more efficient process where businesses only have to submit the information one time in a consistent way, and it is not impacting their ability to work with their various financial institutions.

And so the combination of all those affects means it is just a more efficient and effective program. It also allows all the information to be centrally captured in one way and accessible by all those that need it in order to perform their activities.

Chairman PEARCE. Mr. Fox, as the Office of Comptroller of the Currency releases on an annual basis its bank supervision plan that sets forth the agency's supervision priorities and objectives for the upcoming fiscal year, I am interested in how this process helps financial institutions prepare for their exams. And then, similarly, would a similar process work for AML/CFT priorities if the Treasury Department released those annually? Is that helpful for compliance obligations? Give us some input on that.

Mr. FOX. Sure.

Mr. Chairman, actually, we study that quite closely because knowing the priorities of our supervisor, our principal supervisor in the United States, helps us plan and make sure that we know what the agency is going to care about, and what they are likely to come and examine and ask us about, right? So it causes a focus in the institution and that prioritization actually becomes, in many ways, the institution's prioritizations. So that is, it is very helpful for planning.

I think it would be helpful in the AML space. As you know, one of the OCC's (Office of the Comptroller of the Currency) principal priorities for the last few years has been BSA AML exams.

Chairman PEARCE. Thank you all. My time has expired.

The Chair now recognizes the gentlelady from Arizona, Ms. Sinema, for 5 minutes.

Ms. SINEMA. Thank you, Mr. Chairman, and thank you to our witnesses for being here today. Human trafficking is a growing multibillion dollar problem that demands action by the Federal Government and Congress. Terrorist organizations like ISIS employ human trafficking as a means of funding their operations while terrorizing and tormenting local communities. There have also been over 36,000 reported cases of human trafficking in the U.S. since 2007. And nearly 7 in 10 of those cases involve sexual exploitation.

The rise of the Internet changed the human trafficking landscape in the United States. Prostitution has expanded from the streets to the online marketplace where victims, many of whom are children, are traded to the world.

According to the Department of Justice, traffickers make on average $150,000 to $200,000 dollars per child. I believe we have a moral obligation to protect victims of human trafficking and a national security responsibility to cut off the financial means used by traffickers and terrorists.

I am grateful to Congressmen Royce and Keating, Congresswomen Maloney and Love for introducing H.R. 2219, the End Banking for Human Traffickers Act of 2017, and I am proud to be a co-sponsor of this bipartisan legislation.

The bill includes the Secretary of the Treasury and the President's interagency task force to monitor and combat trafficking. It requires the task force to recommend revisions to anti-money laundering programs to specifically target money laundering linked to human trafficking. And I appreciate the committee's work to improve and advance the bill.

My question for you, Mr. Byrne, and thank you again for being here today, your testimony has cited the need for greater private sector expertise and the President's interagency task force to mon-

itor and combat human trafficking. Can you expand on some of the concerns you have about current practices and tell us what Government might be missing?

Mr. BYRNE. Sure. And we do appreciate the drafting of the legislation.

I think, as I said in my testimony, one of the things that perhaps the private sector hasn't done well is explained how much has actually gone on proactively against human trafficking. In my previous role with the ACAMS organization, we began a relationship with Polaris, as I think the committee is aware. It is a well-respected international anti-human trafficking organization. And what we have been able to do with Polaris—and just met with them 10 days ago—is sit down with a number of bankers that do analytics and with Polaris' staff—they have just recently come out with a study on new typologies on human trafficking—and to try to put those two groups together to create more red flag indicators, more examples where banks could be—and financial institutions in general—can be on the lookout to report human trafficking activity, whether it is forced labor, sex trafficking, all the different categories. So that relationship with Polaris occurs outside of any regulatory requirements.

Previous to that, the number of large financial institutions, including Mr. Fox's Bank of America, worked closely with Homeland Security to do something similar 3 to 4 years ago. They created a number of, again, red flags and indicators. And we published that—"we," meaning the trade association—we published that to the broader AML community so they could be better prepared to look for activity that could be indicators and file suspicious activity reports.

So Homeland Security has done a tremendous amount of work here. They have been with Operation Blue and all the other things that—the Blue Campaign and everything else that they have done—have been tremendous partners. But there is a lot of private sector expertise that we are beginning to share with the public sector that I think can enhance how we look for, report, and detect this. And so there is a lot of information out there.

What we are doing with Polaris will be available probably early next year and certainly can make the committee—make that information available. But you should feel somewhat comforted, as horrific as this crime is and has challenged the world for so long, that the private sector is working very diligently with both the public sector and groups like Polaris to deal with this.

I would only say this about the legislation. Whatever gets, quote, "required," if you consult with the private sector in terms of training and other issues, I think it would make it a better piece of legislation. But the theme makes a lot of sense and I think would go a long way to continue to help in this very challenging space.

Ms. SINEMA. Thank you, Mr. Byrne.

Mr. Chairman, I yield back.

Chairman PEARCE. The gentlelady yields back.

The Chair now recognizes the gentleman from North Carolina, Mr. Pittenger, for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman, and excuse my voice.

I would like to thank each of you for being here today. Your input, advice, is very important for this committee. I would like to particularly thank Mr. Fox and Mr. Poncy for the extraordinary role that you played in building a stronger collaboration with our partners throughout the world, and over 60 countries have benefited from your input and your direction.

To that end, I would like to ask you, Mr. Fox, that, in your opinion, what do financial institutions—what type of difficulty do they have in sharing information with our law enforcement and as it relates to similar investigations with other countries around the world? Can you speak to those challenges?

Mr. FOX. Sure. Congressman, thank you very much. And thank you for your comments.

I think that the sharing of information, both vertically, if I can call it that, from the Government to the private sector, and then among the private sector themselves is one of the most important ways that we can attack illicit finance. And some of the really serious problems that Ms. Sinema—was speaking about with human trafficking and things like that. I think one of the challenges that we have is that we have authority here in this country through the U.S. PATRIOT Act provisions to be able to do that. It is done aboveboard. It is done with care. But at the same time, it is done robustly.

And we, you are aware, Congressman, about our consortium of banks that has really made a difference in some of these areas, like human trafficking and other more sensitive areas.

So that is a great, great thing. The difficulty is sharing with other governments, and that sort of thing. The U.K. itself has developed a little bit different system. They are using a committee format, something that they call the Joint Money Laundering Investigations Task Force, the JMLIT. And that has worked well in the U.K. We participate in the U.K. because we are there. And we think that that works. And in fact, in some ways, it is nice because you always have to come to the committee and you have to come with something. So there is always a topic to talk about.

But other jurisdictions, it is not as easy to share information, either with financial institutions themselves or vertically with the Government without some extraordinary process.

Mr. PITTENGER. Does law enforcement provide you with a request for information through a 314(a) request or some other matter?

Mr. FOX. Well, Congressman, we get the routine requests that we get from FinCEN every 2 weeks. But I think, more importantly, law enforcement has really stepped up over the last year, year and a half, I would say, maybe 2 years, with requests and with work, kind of almost joint work with 314(a) information. And that has made a huge difference for those investigations and those law enforcement agencies when they have done that.

Mr. PITTENGER. Thank you.

Mr. Poncy, currently it is difficult for financial institutions to share information across borders with other branches of the same institution. How does this actually create more risk in the financial system?

Mr. PONCY. Thank you, Representative Pittenger. And thank you for your leadership on the Task Force to Combat Terrorism Financ-

ing. You guys have done terrific work over the last several years, both here and abroad. I want to recognize that and thank you for it.

The cross-border information-sharing issue is central to our efforts to understand risk. When you look at how the international financial system works and the bad guys that we are chasing through it, anybody worth chasing is in several different places, different institutions, different countries. And if we are not able to connect those dots, we are in a very difficult position, whether in industry or in Government, trying to figure this out.

The idea of allowing a financial institution to share information with its branches, its affiliates abroad, which is captured in the proposed legislation, is overdue and will be very helpful.

As I argue in my recommendations, I think there is more that we can do. Part of this challenge is cross border. Part of this is the way that we share information and who is in the room, what kind of information we are sharing. Think of it this way: The way that the BSA was developed was transactional and reactive. We were looking for specific individuals and actors and specific institutions based on specific transactions or vice versa. The way the system works now, we have the ability to turn the lights on. We have the ability to look at risk more systemically with more information to identify patterns of activity proactively. The more that we can do to allow our institutions and our authorities to work together with more information using the latest technologies to understand what risk looks like and then pursue it, the more effective and more efficient we will be. Those principles are clear. The real question is, how do we get from here to there?

I think what you have done in this proposed legislation, to put Treasury in a position to manage this, is exactly the right way to go. And there are more details in my specific recommendations, but that is the general thrust.

Mr. PITTENGER. Thank you.

Chairman PEARCE. The gentleman's time is expired.

The Chair will now recognize the gentlelady from California for 5 minutes for questions.

Mr. PERLMUTTER. She is not here.

Chairman PEARCE. I will recognize the Ranking Member for 5 minutes, Mr. Perlmutter.

Mr. PERLMUTTER. Thanks, Mr. Chairman, and thank you to our panelists.

I appreciate your testimony.

So, Mr. Poncy, you are talking about exactly the purpose of this bill, that we are trying to be more effective, more efficient bring ourselves into this century with the legislation, with the innovation, that is possible. And I think both sides of the aisle are supportive of this.

We have seen that there are just a lot of ineffective kinds of requirements of the financial industry to try to prevent bad guys from doing bad things. We want to be better at that. One of the big expansions, however, is in section 4, page 5, of the proposed legislation, lines 8 through 16. And it is a very innocuous section, but it is a pretty big expansion. So it says, in this, we change the PATRIOT Act—and I would open this to all panelists—by striking

"terrorists or money laundering activities" and inserting "terrorist activities, money laundering activities, or a specified unlawful activity as defined in section 1956(c)(7)," which seems pretty limited on its face, except, if you go to that section, there are a couple hundred crimes, from endangered species to pollution to nutrition to housing to mail theft.

Can somebody explain to me why we want to expand it in this fashion? Because this is a hot button spot for privacy advocates and others.

Mr. PONCY. Thank you so much, Congressman Perlmutter. That it is a great question.

The frustration is, when you look at the expansion of money laundering and money laundering predicates over the past 30 years, it is astounding. We started in the BSA looking for cash, looking for drug money, looking for tax compliance. It is now clear under global standards and under U.S. law, under 1956, that all forms of serious criminal activity create proceeds that then are subject to money laundering prosecution, confiscation, and pursuit. We need those authorities. They exist now in 1956.

The question is, if you are trying to understand risk in the financial system, you may see something that doesn't look right, you may think it is suspicious, you may not know if it is money laundering, terrorism financing, you may not know if it is fraud. If you have to tie that information-sharing request to a specific understanding of money laundering, you are going to put a chilling effect on information sharing.

If you expand it to say we already have money laundering covering everything in 1956 for a reason, enabling our financial institutions to share information even where they are not sure whether it is a predicate offense or money laundering—is it an act of money laundering? Is it an act of crime?

There have been rulings and administrative rulings from FinCEN on this that are fairly narrowly interpreted, because it concerns the way 314, the PATRIOT Act, was written. What is very clear in the debates over the last 16 years is that that expansion that you have read is going to enable more sharing of information around what everyone agrees is suspicious or criminal activity but might not qualify under the narrow constriction of 314. That is the intent.

Mr. PERLMUTTER. I think the concern that was raised by the defense bar was that it is just a very big expansion and that, potentially, whether it is the banking institutions or some others are now really detectives all the time and a fear that, instead of we get more limited in SARs, we are now expanding SARs. So just a general concern for those of you to think about.

The second area I would like to talk about is really Mrs. Maloney's section of the bill on beneficial ownership. And the complaint that I have received is initially, should the financial institutions be the police or the initial detectives, should the lawyers be that, or should it be somebody else?

I would just open it up to the panel, why this burden should be shifted at all and whether or not the IRS ought to play a role. Mr. Hill has mentioned to me, everybody sends their tax return into the IRS; why don't we just use them as, in effect, a clearinghouse?

And I would just open it up in my last 12 seconds to anybody who can answer it—in now 8 seconds.

Mr. FOX. Thank you, Mr. Ranking Member.

Listen, I think we all just recognize that the information is highly valuable to law enforcement. We think that by the financial institutions collecting—we want the information, frankly, ourselves. We can use it to do our work. Right? But the fact is law enforcement is not going to have ready access to our data unless they have a reason to suspect that some entity is doing something untoward and they could subpoena.

So we actually support that. I think Mr. Hill has a really interesting idea where some recipient gets this. I think it should be studied and thought about a little bit, but we at The Clearing House support it. Because we think the information should be gotten, and it shouldn't be the institutions just to get it.

The other thing to remember is that the institutions are going to collect to the rule, which is 25 percent. If it is less than that—

Mr. PERLMUTTER. You won't.

Chairman PEARCE. The gentleman's time has expired.

The Chair would now recognize the gentleman from Pennsylvania, Mr. Rothfus, for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman.

Mr. Bley, section 2 of the Counterterrorism and Illicit Finance Act addresses threshold updates to currency transaction reports and suspicious activity reports.

Can you describe to us how increasing the CTR/SAR thresholds would reduce regulatory burdens on financial institutions and their customers?

Mr. BLEY. Certainly. Thank you for the question. And I have, actually, two answers to that.

I can give you the exact numbers. We do our analysis, and we can see that increasing the thresholds is going to reduce the number of filings. It is a pretty straightforward calculation. And it is impactful, because there are a significant number of large—a large volume of small-dollar reporting and filing that takes place.

But, frankly, the MBCA's view on this is not that the actual threshold level exactly or precisely is what is at stake here; it is really part of a holistic solution to improving the efficiency of the program. Having an excessive number of false positives, an excessive number of filings on small-dollar cash transactions is just not going to deliver valuable information that is going to be of significance.

But, ultimately, what we believe is best is the combination of everything. And one idea that we put out is the possibility of some form of—a different form of reporting that would be more efficient and effective for smaller-dollar reports.

And so it doesn't, per se, matter whether it is a $30,000 limit or a $25,000. What matters is that it is an efficient and effective delivery of small-dollar information. But we also believe that, fundamentally, the sheer volume that is being submitted could not possibly be used effectively for investigations. It might ultimately connect to a financial crime, but we are talking about numbers that are so extreme, it is hard to believe that it could be as valuable.

Mr. ROTHFUS. If I could move over to Mr. Fox, could you give us a little more background on the SARs? Can you please describe how a SAR is triggered and why certain activities, regardless of the transaction amount, trigger them?

Mr. FOX. Sure.

So what we do and what I think most institutions do is that we have sophisticated systems or processes, if you are not big enough for systems, to really try to detect what could be unusual activity, right, for our customers. So it all starts with your customer, knowing your customer, knowing what is normal for them, and really understanding what could be.

If you see activity that just doesn't make sense for either that type of customer or you see activity that really does look bad, then that gets escalated to an investigation, where an analyst actually looks at that material and will make a judgment about whether or not it is suspicious.

Suspicion is a pretty low threshold. Actually, it is one of the lowest, I think, in the Federal system. But it still is a threshold. So if we think that the facts—these are fact-based judgments—demonstrate that there is something that is suspicious, we will then move to file a report on it.

Mr. ROTHFUS. And, to be clear, increasing SAR thresholds should not deter filings of suspicious reports of any amount, correct?

Mr. FOX. I don't know that for sure, sir. I don't think it would with us. I think we would continue to file suspicious reports.

The danger of increasing a threshold, I think, is that you could say that—right now, we do not file SARs unless it is extraordinary under the $5,000 threshold that exists today. Right? So what we take that rule to mean is that the Government has told us that they are not interested if it is below $5,000, with some exceptions. But if we see something that is odd at $100 or $25 that we think could be related to something serious, we are going to file that SAR.

Mr. ROTHFUS. Mr. Poncy, as you know, the Counterterrorism and Illicit Finance Act details a no-action letter policy that is meant to increase certainty for institutions.

How important is it that we allow financial institutions to experiment with their AML programs for the purposes of improving their efforts to identify money laundering and terrorist financing?

Mr. PONCY. Thank you, Congressman.

I think such experimentation is incredibly opportunistic. The compliance officers and the risk managers we have in our financial institutions are increasingly entrepreneurial, and the more that we can encourage them to think with us on how to assess and manage risk, the more effective our system will be.

Giving them the latitude to do that involves two things. One, they have to be protected from downside exposure. If there is any exposure—as a general counsel for a financial institution, it is very difficult to say, I want to go play in that game where we can find bad guys if it is going to expose me to regulatory risk or to enforcement risk. It is very hard to responsibly allow that. So we have to cover the downside risk for well-intentioned and legitimate efforts to pilot new innovation. We have to do that.

Second, there has to be upside for that to say, I am going to now put resources out of where I know I need them because my examiner and others are telling me and put them in a place where I can experiment and try to be better. What is my upside in that? There are ideas that Treasury or ideas that these folks have that we have talked about for literally a decade.

Again, the structure of management in the BSA here is critical. And putting Treasury in a position where it could aggressively cooperate with industry in stimulating these sorts of operational pilots, I think, will create a market on how better to assess and manage all the risks that we care about, from terrorism financing to money laundering, to human trafficking, to tax evasion, to bribery and corruption.

Mr. ROTHFUS. I thank you. And my time has expired.

Chairman PEARCE. The gentleman's time has expired.

The Chair would now recognize Mr. Lynch for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman and also the Ranking Member, for arranging this hearing. You have been doing great work. I really appreciate it.

And I want to thank the witnesses for helping the committee with its work, as well. Thank you.

I have to say that I think there are a lot of good things that are being raised in this discussion draft. There are one or two things that concern me on the negative side. And that is raising the cash transaction, the reportable amount from $10,000 to $30,000.

So, right now, if you have a transaction $10,000 or over the bank will take identification, a license, a Social Security number, and make that whole report. The draft discussion wants to raise that to $30,000. Now, this is a per-day limit. So, under the discussion draft, if we went to $30,000 in cash, you could literally take $179,000 in cash, in transactions—and that includes deposits, withdrawals, and currency exchange, so if we are changing from dollars to rubles or rubles to dollars—you can basically do $180,000 or just $179,000 in cash per week and not trip the wire for reporting if this discussion draft passes unamended.

So I have a great concern about that. I think that the $10,000 was there for a reason. And I know it is a 1972 standard, I think, so we need to change that. But I don't think going to $30,000 in cash per day is really warranted. I think we might want to take a little bit more cautious approach.

The other thing is I would love to have the Financial Crimes Enforcement Network personnel here at this hearing, because I have had discussions with them, the same issue. I have said, do we really need all these CTRs? We have got tens of millions of cash transaction reports and suspicious activity reports; can you even look at these? And they say they need them all. And I know they are looking for a needle in a haystack, I said, but now you have this huge haystack.

So I asked the folks at FinCEN, I said, do you need this? And they said, yes, this helps us catch the bad guy. We need context. We need all those reports. That is what they tell me.

But I would really like to hear—maybe in a future hearing we have the folks whose job it is to catch the bad guys, have them

come in and tell us why they need this stuff and demand of them some accountability.

Because I think you are on the right track; I don't think we need all of these reports. As a matter of fact, it can bog us down, by getting too much information. But I think we need to right-size it rather than blow the lid off, as might happen under this discussion draft.

So, Ms. Ostfeld, thank you very much again. I know we worked before on some of the anti-money-laundering stuff.

The report by The Clearing House starts with the premise that, quote, "the current anti-money-laundering and combating the financing of terrorism statutory and regulatory framework in the United States is outdated and, thus, ill-suited for apprehending criminals and countering terrorism in the 21st century."

Is that really true? I mean, we deal with FATF, right? A hundred and eighty countries. And they review each country at least year to year, some of them more often. Are we really doing that poorly that we have to throw out this system? Could we undermine some good things that we are doing by changing everything?

Ms. OSTFELD. Thank you, Congressman Lynch.

I can't speak for The Clearing House report, but what I can say is that we haven't updated these laws in a very long time, and investigation after investigation continues to reveal dirty money getting into our system. So, while I wouldn't say we want to throw out all of our money-laundering protections, there are concrete steps we could take to strengthen it.

And so some of that is putting this customer due diligence rule into play in May of next year, as the regulation stands. Another piece is ensuring that it is no longer possible to set up an anonymously owned company in the United States.

Mr. LYNCH. Right.

Ms. OSTFELD. The rest of the world is moving on this. And while we used to be the leader—we were the first country really talking about this, all the way back in 2008, but, since then, the U.S. hasn't moved forward.

FATF told us in 2006 we are not compliant. They told us again in December 2016 we are not compliant. And the United States was part of developing those rules and pushing them around the world.

And so you have now every EU member state has to put into practice a central beneficial ownership registry. They are all doing this. They are all in the process of—

Mr. LYNCH. But we are not, right?

Ms. OSTFELD. And we are not.

Mr. LYNCH. Right. Well, I appreciate that.

Mr. Chairman, I yield back the balance of my time.

Chairman PEARCE. The gentleman yields back.

And the Chair now recognizes the gentleman from California, Mr. Royce, for 5 minutes.

Mr. ROYCE. Thank you, Mr. Chairman.

And I will start again with Stefanie Ostfeld. Thank you very much. Let me ask you a question on human trafficking and the fact that traffickers are increasingly using the financial system in order

to fund their illicit activities. And, clearly, many countries are lagging behind our system here.

But do you think you would be supportive of a new standard here in the State Department's Trafficking in Persons Report to include whether foreign governments have a framework in place to prevent financial transactions involving the proceeds? And we are talking about severe cases here, trafficking underage girls, things like that. But what would be your position on that?

Ms. OSTFELD. Well, thank you, Mr. Royce. I would obviously have to look at it to put forward a clear position, but, yes, that makes sense to me, that the State Department would report on that.

Mr. ROYCE. If you could take a look at my legislation on this, I would appreciate it very much.

And the next question I was going to ask, maybe of Mr. Bill Fox or anybody else that wanted to comment, but the Counterterrorism and Illicit Finance Act requires Treasury to issue rules permitting a financial institution to share suspicious activity reports with their foreign branches.

And so here is the conundrum. I support this concept, which would improve enterprise-wide management, but my own introduced bill would expand similar SAR sharing under two conditions. The first condition would be the foreign branch or affiliate must be located in a country that is a member of the Financial Action Task Force or is part of a FATF-style regional body. And, second, such country must have adequate privacy and data security protections in place.

So, Mr. Fox, if you would like to begin to opine on that, and then I would like to hear other members of the panel.

Mr. FOX. Thank you, Mr. Royce. I agree. The Clearing House supports the language that is in the draft bill to be able to share.

I think one of the challenges, if you just take a look at the J.P.Morgan enforcement action involving the Bernie Madoff matter, it is a classic example of what happens when information can't be shared across border for a financial institution. And so—

Mr. ROYCE. I understand that part of the problem. But look at it from the standpoint of the risks to allowing SAR sharing, on the other hand, with foreign branches or affiliates in certain countries. And you have to get an appropriate way here to ensure that widespread information sharing between institutions within the same family still protects sensitive information, given some of these governments, because you can have foreign access.

So that is the balance I am looking for here, and that is why these provisions are out there in the legislation we are pushing.

Mr. FOX. I think it is a sound issue to raise. I really do. I think we would, of course, manage the sharing of any information throughout our program in the way that we would do things. And there may be information—if we had the authority to share our actual SARs or SAR information across border, we would take a look at that and determine whether or not we were comfortable in a particular jurisdiction that that information was safe and secure. Because, again, these are reports about our customers, right? We don't want that out. We don't want it leveraged in the wrong way.

So I think we would do that anyway, but I think you have raised a very good issue that should be thought about pretty heavily.

Mr. ROYCE. Any other perspectives on my legislation on this?

Yes?

Mr. BYRNE. Congressman Royce, I think those standards that you have articulated make a lot of sense. I think, historically, the reason why they could not share in the past has been because regulators and enforcement lawyers have said what you just alluded to: You can go to some countries where the controls are not that strong.

So having it at a FATF or a FATF regional organizational jurisdiction I think would give both comfort and structure to this and could get us to a place of enterprise risk management, which we desperately need.

Mr. ROYCE. And leverage them into similar arrangements.

Mr. BYRNE. Absolutely.

Mr. ROYCE. Thanks, John.

Any other input there?

Mr. PONCY. Just very quickly, Congressman. Those are great interests.

I would just again point to the need for ownership at a tactical level of these issues. We have members in FATF—I was the head of the U.S. delegation to FATF for a number of years. There are members of that whole body that we are not very friendly with and that we have real concerns with. It is a good marker. Another good marker is reciprocity. You have to give to get. We need information from others as well.

There are a set of factors that I would be happy to work through with your staff to look at, these are factors of consideration that Treasury should be considering when certifying this kind of information sharing. I think that is smart. And it is going to be impossible to legislate that on a country-by-country basis. I think you need to delegate that to Treasury underneath criteria that I would be happy to work with your staff on.

Mr. ROYCE. Thanks, Chip.

Thanks, Chairman.

Chairman PEARCE. The gentleman's time has expired.

The Chair now recognizes Ms. Velazquez for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Ms. Ostfeld, I share Mr. Royce's concern about developing methods for financial institutions to share information on SARs with their foreign affiliates and branches. However, I am worried about the civil liberty and privacy concerns that arise with the expansion of information sharing, particularly in the overseas conflicts.

What safeguards would you recommend to ensure that civil liberties and privacy safeguards are not eroded?

Ms. OSTFELD. Thank you, Congresswoman.

So, right now, as has been said by others, there is information that banks can't share with other parts of the bank, much less its foreign counterparts, without risking a lawsuit. This doesn't make sense. And so that is what I think this part of the bill is trying to get at.

For that reason, we support the effort to expand that. However, it is definitely worth taking into account civil liberties concerns and scrutinizing them further. It definitely should be something that is

looked at, to make sure that safeguards are put into the bill, that it doesn't have any other kind of effects that weren't intended.

Ms. VELAZQUEZ. Yes.

Mr. Fox, would you like to comment?

Mr. FOX. Sure. I think that there is always going to be a balance between privacy and information sharing. And I think that the way we view it at Bank of America—and I think member institutions at The Clearing House feel the same way—is that we are stewards of that, right? We have a responsibility to our clients and our customers to keep their financial data safe and secure.

Ms. VELAZQUEZ. Thank you.

And, Ms. Ostfeld, in your testimony, you indicate that we should be encouraging banks to incorporate new technologies into their compliance activities but warn that it must be done responsively.

What technological innovations should we be encouraging, and what safeguards would you recommend?

Ms. OSTFELD. Well, I think it is important to either task Treasury or Treasury and the regulators to incentivize these innovations. Because I think the concern is, how will banks move forward with this? And the point is for them to look into this, to work with the banks on this, so banks at an early stage can be checking with the regulators to see what they think works for any particular process.

Ms. VELAZQUEZ. Thank you.

Mr. Fox or Mr. Bley, in our letter to Secretary Mnuchin, Representative Royce and I also raised the need for law enforcement to provide feedback to financial institutions on the effectiveness of their SARs.

How would you implement a process to provide financial institutions with feedback to improve law enforcement outcomes?

Mr. FOX. Thank you, Congresswoman. That is a really important issue. I really enjoyed that letter, by the way.

Let me tell you, I think that this is why this is important. We get feedback from law enforcement and from FinCEN anecdotally, and that is always good to hear, right? It is always good to hear that you are actually helping. But to be honest with you, we don't get bulk feedback on our filings.

The reason it is important is that we tune our systems based on our own decisions of whether to file, mainly for other factors, too, but mainly for those decisions. So if we have those decisions wrong, we could be creating an echo chamber that just causes worse filing, right? You know what I mean? So if they could just give us a thumbs up or a thumbs down.

It is a little bit like, if you have ever been through Heathrow and you hit the smiley face at the end of the security. It is either a smile or a frown. If we could just get that kind of feedback about our filings, we could do wonders with tuning our filings to make them better, more focused. And then you would separate the wheat from the chaff, if you will, and leave innocent customers out of that reporting. It would actually make us better that way.

So we think that is a really important point that you raised and—

Ms. VELAZQUEZ. Thank you.

Mr. Bley, what is your take?

Mr. BLEY. I concur wholeheartedly with Mr. Fox. It is exactly the scenario we have. If we can get information back, we can tune better and we can deliver more meaningful information. That is the end of the story.

Ms. VELAZQUEZ. Very good. Thank you.

I yield back, Mr. Chairman.

Chairman PEARCE. The gentlelady yields back.

The Chair now recognizes the gentleman from Texas, Mr. Williams, for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman and also Ranking Member, for your work on this issue.

I believe that the legislative proposals before us today largely represent steps in the right direction toward combating the abuse of our financial system by bad actors. Our framework is in need of an update, and I look forward to the testimony provided by all of you today. And thank all of you for being here. Appreciate it.

My first question, Mr. Bley—and thank you for being here today as a representative of the Mid-Size Bank Coalition of America. I appreciate your testimony and look forward to your knowledgeable answers to my questions.

Now, when considering a reform of this nature or any legislation, for that matter, the impacts a proposal will have on consumers and small businesses are a foremost concern of mine since I am a small-business owner of 44 years and understand the need to help Main Street. And I am Main Street, still own my business.

As you rightly point out in your testimony, community financial institutions are already struggling under the Dodd-Frank Act, and the need for them to provide BSA and AML compliance can sometimes mean the difference between profitability and operating at a loss and even job loss.

Further in your testimony, you mention that all of the ideas in the bill have merit. However, one specific idea I would like to discuss with you is the proposed CTR threshold change. This committee should strive to provide regulatory relief for institutions while at the same time increasing the usefulness of information that you refer to.

So what current resources do MBCA institutions devote to CRT filings, and what relief will the proposed ruling's threshold change to $30,000 provide? And then what—and we have talked about this—and then what relief will this provide to community financial institutions?

Mr. BLEY. Thank you for that question. And I will give you information on the impact, directly to your question, but I also want to emphasize that just changing the thresholds isn't the solution to this problem. It is part of a holistic package of making the information more meaningful and more significant. And we really applaud the broader solution that is on the table.

But it is important to recognize that just changing a threshold itself reduces the size of that haystack of information that is out there. And for midsize banks, we estimate CTR filings would drop by 50 to 80 percent, and that was with the original $25,000 limit that was in the bill earlier. And SAR filings would probably drop by 8 to 10 percent, structuring filings would drop.

There are just so many—and that, together, represents about 10 percent, 8 to 10 percent, of the staff within the BSA organizations that are just looking at the hundreds of thousands of CTR and small-dollar report filings every year.

Mr. WILLIAMS. OK.

Another question for you. One of the problems you identify in your testimony is the high rate of false positives that are generated by transaction monitoring systems. One way the proposal before us seeks to lower that rate is by allowing for increased adoption and innovation in artificial intelligence software used by financial institutions in reporting.

So how have midsize banks benefited from the innovative machine learning pilot programs? And how can artificial intelligence in reporting benefit financial institutions across the spectrum, from large to small?

Mr. BLEY. This is particularly impactful for midsize banks, because we just don't have the scale and scope to be able to spread the cost of analyzing the information that is just ultimately proved to be unuseful. Generously, a 90-percent false-positive rate is really an unacceptable outcome for a successful program.

We have been investing in the same kinds of tools that the large banks have been using, very high-cost, sophisticated tools. And they are generating more meaningful alerts to us, but, at the same time, the tuning process and the regulatory environment that will analyze your tuning process to ensure that you are calibrating appropriately is just not working. It doesn't get you to a lower false-positive rate.

And there are a number of ideas that have been put out with the midsize banks. In fact, we have worked very closely with the OCC to try and identify techniques that we could use. So it is both the tools and also intelligent ways of applying the tools. And the regulators have worked productively with us on ideas, but, ultimately, we don't know and they don't know what is acceptable without good collaboration with Treasury, with FinCEN, to make sure that this is an acceptable application of the rule.

So I think the moral of my story is that they were investing in the tools but we need more collaboration in order to put that into practice and make the information that much more meaningful.

Mr. WILLIAMS. Thank you for your testimony.

And I yield my time back.

Chairman PEARCE. The gentleman yields back.

And the Chair now recognizes the gentleman from Georgia, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

This has been a very informative panel. And I would like to let you know that I am Co-chairman of the Congressional FinTech Caucus. And I truly believe that both our anti-money-laundering and the Bank Secrecy Act, they offer great opportunities for our FinTech companies to come together, partner with our banks, and come up with some innovative solutions to this. And I think that if it is done right, it can both ease the burden on banks struggling to meet their requirements while also improving the job banks are doing at threat detection and risk management. It is a win-win situation.

So, Ms. Ostfeld, let me start with you. And as one graduate of the University of Pennsylvania to another, let me welcome you to your testimony to the Financial Services Committee. But after reading your testimony, I find that you agree with me about the use of technology.

Now, in a couple of pages in your testimony, you say this, on page 3: "Use of new technology should be encouraged, but must be done responsibly. A section of Treasury should be created or tasked with reviewing, approving, and monitoring the use of new technology by financial institutions. There should not be a safe harbor provision." And you say that in two parts of your report.

And then you also say that you are "supportive of banks incorporating new technology into their compliance activity. However, we are not supportive of the sweeping nature of safe harbor positions." And, quite honestly, I couldn't agree with you more on that.

However, in section 7 of this legislation we are taking, in the Counterterrorism and Illicit Finance Act, my Republican friends want to provide an explicit safe harbor for financial institutions that use technological innovation to fulfill the bank secrecy minimum and the anti-money-laundering program requirements.

So, when you look at your testimony there—and let me just ask you this, Ms. Ostfeld. Do you think that without the safe harbor that banks would have an incentive to invest in these new technologies and partner with fintechs?

Ms. OSTFELD. Thank you, Congressman Scott.

Yes. I think something that could happen is Congress could direct the regulators to create innovation programs. This is something that could happen which would include consultations with the banks so that everybody is actually working together to come up with these new ideas, and it makes it clear to banks that banks are working with regulators early on in this process, what they think will actually work to help them with their compliance obligations. I think it is something that could absolutely happen without a blanket safe harbor.

Mr. SCOTT. Well, thank you very much for that.

Mr. Chip Poncy, can you comment on what actions Congress or the White House could take outside of the safe harbor that would ensure that financial institutions are implementing the latest advances in threat detection as they fulfill their Bank Secrecy Act and the anti-money-laundering obligations?

Mr. PONCY. Thank you, Congressman.

I do think that there are steps that both Congress and the Administration should take, and I have elaborated on those in my testimony.

But I think the easiest way to understand this is, technology is used in a lot of different ways in compliance. Think about this from the perspective of a customer experience. You walk into a bank, you are identified, you are verified. We use pieces of paper, we use independent databases to do that. There is a whole range of biometric technologies that are going to facilitate the easier verification that somebody is who they say they are. This is particularly important when you are dealing with communities that aren't necessarily documented or parts of the world where identi-

fication documentation isn't the greatest. There is that use of technology.

There is the use of technology to collect, manage, and protect bulk data. That technology is exploding, the ability to manage that data in a way that drives analytics to identify patterns of interest. There are ways that we should be working to enhance that capability.

And then there are technologies that can encrypt and protect that data, to address some of the civil liberty concerns that Congresswoman Velazquez was talking about, that would allow you to access and analyze that data without necessarily getting into the personal identifier information that people are rightfully concerned about.

So there are lots of different ways that technology can assist in compliance and risk management. To do this well, to do it strategically and methodically, I would argue you need two principals. You need somebody to captain the ship. And I think what you have done with the proposed legislation to start to put Treasury in a position to manage this and make them accountable, with the authority to manage it and with the support of the Administration, from Justice to the regulators, is one approach, is one factor—

Mr. SCOTT. Thank you, Mr. Poncy.

Chairman PEARCE. Thank you.

The Chair would recognize Mr. Davidson, from Ohio, now for 5 minutes.

Mr. DAVIDSON. Thank you, Mr. Chairman.

Thank you to our witnesses. I really appreciate your testimony and your expertise in the field.

I want to share Mr. Perlmutter's concerns about privacy and, frankly, the burden on small businesses—unintended, perhaps, consequences, perhaps unavoidable consequences. But it seems that there are a number of ideas that could make this an easier way to accomplish the mission of securing our country in, frankly, a more constitutional way. I am very concerned about the information-sharing apparatus. Frankly, the whole premise of BSA/AML is, in some ways, deputizing a large swath of the private sector.

I am also concerned about cybersecurity and a number of other provisions here. So I know in a few short minutes you can't cover all that. But, Mr. Bley, we have seen consequences of data breaches at Uber and Equifax and, of course, the SEC (U.S. Securities and Exchange Commission), but Government databases are compromised just like the SEC's was. What additional safeguards would be included in this bill to ensure that personally identifiable information of millions of American citizens are not compromised?

Mr. BLEY. I think this is a critically important question for banks in general, not just regulated to BSA. We are collecting an intense amount of information from all our customers, and there is no doubt that cybersecurity and the ability to protect that data remains of the highest priority for midsize banks and, I am sure, all banks across the country.

It is our belief that we are going to continue to invest in the tools that we need to protect our customers' data whether this bill passes or not and whether or not we modernize the BSA act.

But that was one of the main reasons that I believe the beneficial ownership rule should be done at a public-sector level, because, as it is currently structured, businesses are supplying information to multiple institutions stored in multiple environments, and it is really, in some ways, creating a privacy risk as opposed to reducing it. And so a central public-sector model should allow for the ability to protect that more carefully.

Mr. DAVIDSON. What would someone's remedy be if they feel the ownership structure of their company has been improperly released or made public from this database?

Mr. BLEY. From the central database?

Mr. DAVIDSON. Correct.

Mr. BLEY. I think this is something we would have to manage and that would have to be managed through the central infrastructure.

Mr. DAVIDSON. What would be the consequences? Is there anything in the bill where authorities at Treasury would contain—there are certainly criminal fines and penalties for businesses that don't disclose things. What about people who misuse the database? Law enforcement, banks, whomever has access. Are there penalties or fines for people that misuse the data?

Mr. BLEY. I certainly didn't see that in the bill itself.

Mr. DAVIDSON. Is there recordkeeping to say who has misused it, whether they have been provided retraining or perhaps terminated, perhaps prosecuted? Is there anything that would keep records of that for people that have abused the access to this information?

Mr. BLEY. I am probably not the best person to respond to that question.

Mr. DAVIDSON. I haven't seen it in there.

And then there are the concerns about the nature of beneficial ownership. If you were asking who is the beneficial owner, most people would say, who has control of the company? But that is not the narrow definition here. It is an incredibly broad definition which doesn't even make it clear that it has to be an actual owner. "Someone who might exert influence." It could be a lender. It could be someone on the board. It is so undefined, it is hard to fathom that we would launch this as an actual law.

How could we possibly narrow this definition and still accomplish our mission? To the panel.

Mr. Poncy?

Mr. PONCY. Thank you, Congressman.

And I certainly want to leave room for Ms. Ostfeld, but I just want to say very quickly: Treasury engaged in a 6-year rulemaking process; had unprecedented public hearings in New York, Chicago, Los Angeles, Miami, Washington, D.C.—unprecedented in the 40-year history of the BSA—to get to understand what kind of a definition for "beneficial ownership" would work for customer due diligence for financial institutions.

Is it perfect? I don't know that anyone says it is perfect, but—

Mr. DAVIDSON. Could they make it more broad? You said they spent 6 years. In 6 years, they have come up with a definition that would be hard to imagine finding a way to write it so that it is more broad than it is today. Surely we can narrowly tailor this.

The Fourth Amendment was very narrow. If there is probable cause, then you go get a warrant.

Mr. PONCY. So the definition—

Mr. DAVIDSON. My time has expired, and, Mr. Chairman, I yield back.

Chairman PEARCE. The gentleman yields back.

The Chair would now recognize the gentlelady from New York, Mrs. Maloney, for 5 minutes.

Mrs. MALONEY. Thank you. Thank you, Mr. Chairman and Ranking Member Perlmutter.

This hearing is very important to me because I have been working on legislation to require disclosure of beneficial ownership information for almost 10 years, and this is the first legislative hearing we have had on a beneficial ownership bill. So I deeply want to thank the Chairman, as well as Chairman Luetkemeyer, for working with me and Mr. Perlmutter all year long on this beneficial ownership issue.

At the beginning of the year, I offered an amendment to the committee's oversight plan that said the committee should address this beneficial ownership issue, and Chairman Pearce spoke in favor of my amendment and said he would work with me on this issue. And he has been true to his word and has worked very productively on this issue, and I want to publicly thank him.

Of course, the legislation package that we are considering today is just a discussion draft, and there are still some changes that I would like to see made to the beneficial ownership piece of the package, but I am really encouraged by the progress we have made.

The issue was first brought to me by a really legendary district attorney, District Attorney Morgenthau in Manhattan, who was very famous for cracking a lot of difficult cases. And he said they could be tracking suspected terrorism financing, drug money, gun money, sex trafficking money, and they would hit a wall when they hit the beneficial ownership and no one knew who they were.

Likewise, we have had problems with the CFIUS process, where they want to protect ownership in the United States from any element that might hinder our national security, and they haven't been able to find out who is buying or trying to buy sensitive information of the United States because it is in a beneficial ownership package.

So I think that this is a very important tool for law enforcement. And it has been endorsed by many levels of law enforcement. And it would help us to protect our citizens and to help law enforcement do their job. So I hope that we will continue to build support of it.

So the very first question that I want to ask, and I want to ask it of everybody on the panel, just yes or no, and just go right down the panel, I just want to know: Do you support this legislation, or the concept of it, requiring companies to disclose their beneficial owners to Treasury at the time that the company is formed? Just a yes or no answer.

Mr. Bley?

Mr. BLEY. Yes.

Mrs. MALONEY. OK.

And Mr. Byrne?

Mr. BYRNE. Yes.
Mrs. MALONEY. Mr. Fox?
Mr. FOX. Yes.
Mrs. MALONEY. Ms. Ostfeld?
Ms. OSTFELD. Yes, we support your bill, H.R. 3089, and we think that the discussion draft is a good first step but it needs some amendments.
Mrs. MALONEY. Yes. I do too.
Mr. Poncy, president and cofounder?
Mr. PONCY. Thank you, Congresswoman. I agree entirely with what Ms. Ostfeld just said.
Mrs. MALONEY. OK. Thank you. That is a positive step forward.
I would like to ask Ms. Ostfeld: You and I have worked together on this issue for many years now, and your organization, Global Witness, did a fantastic undercover investigation that was featured on "60 Minutes" last year, where you had undercover investigators posing as corrupt dictators, and you had them approach 13 lawyers asking for help hiding money. "We don't want anyone to know who we are, but we want to be able to have access, easy access, to our money." And, amazingly, 12 of the 13 lawyers agreed to do it, using anonymous shell companies.
And I encourage everyone to watch this clip. It is a very important one. And you would hear on it that they said, "Don't go to banks, because they will find out who you are. Go to the LLC. No one will know who you are."
So my question for you is, what are the most important improvements that you think should be made to the beneficial ownership section?
Ms. OSTFELD. Sure. For the bill to be fit for purpose, it needs to do three things. It needs to collect the right information, it needs to be accessible to the right stakeholders, and it needs to keep it up to date. Right now, it is not accessible to the right stakeholders.
But because the definition has been asked a few times, any strong definition of "beneficial ownership," for it to work, needs to have two prongs. You need to understand who actually owns it, as in shareholders, legal ownership; and you have to understand who owns the entity, as in effective control. So this is control by other means. This could be by a trust, power of attorney, some other kind of way for controlling it, because you want to understand who is benefiting economically from this and who essentially pulls the strings, which isn't always the shareholder.
So any definition needs to encompass both of those prongs, which both your bill and the discussion draft do that. The discussion draft was negotiated that it is not quite as strong as your bill, but it still does that. So we support the definition in the bill.
However, it makes it very difficult for law enforcement to access this, both domestic law enforcement—it says only Federal law enforcement with a criminal subpoena. So this means State and local law enforcement does not have access to it, and it means parts of the Federal Government and Federal law enforcement that doesn't have access to criminal subpoenas, that only have civil and administrative subpoenas, don't have access to this. So that is something that needs to change. It needs to be available for civil, criminal,

and administrative subpoenas or State, local, and Federal law enforcement.

But it also makes it really hard for foreign law enforcement—

Chairman PEARCE. If I could get you to wrap up your answer, please.

Ms. OSTFELD. It makes it very difficult for foreign law enforcement to access it. And you need to make sure that what we are sharing with foreign law enforcement is what we are asking foreign law enforcement, in return, to share with us. And it needs to be able to be entered in court.

The other piece is there seems to be a loophole that makes it easier for foreign owners to—

Chairman PEARCE. The gentlelady's time has expired.

The Chair would now recognize Mr. Budd for 5 minutes.

Mr. BUDD. Thank you, Mr. Chairman.

And thank you to all our witnesses for joining us here today and for your time.

I want to use my time to continue to discuss the Counterterrorism and Illicit Financing Act. There is no doubt that the Bank Secrecy Act needs an upgrade, where efficiency, along with safety, is our ultimate end goal. And while there are provisions in this bill that need addressing, like the new beneficial ownership requirement found in section 9, I am hopeful that we can get to a good final product.

So I want to talk through about section 7 of the Pearce-Luetkemeyer legislation that deals with technological innovation.

And, Mr. Bley, you stated in your testimony that the BSA is among the most complicated and costly requirements with which a bank must comply. And I agree this bill gives them some freedom to innovate in this space. But does this provision do enough to help with the community banks or the smaller, midsize banks that you represent and the credit unions, who don't have the same financial resources as the larger institutions, to keep pace with the technological advancements that frequently change?

Mr. BLEY. Thank you for that question.

And I do think it does actually create the framework for supporting innovation. And there are ideas out there that do provide support for small and midsize banks that may be different than what some of the larger banks need to do.

And one such idea that I discussed in my written testimony is a utility that we have been developing that allows for more collaboration and consolidation of BSA work and information amongst the banks with an independent utility. And we have developed such a thing, and banks are starting to look at how they can engage with it.

In order to use a collaborative, independent utility, we are going to need support from the regulators from Treasury to say this works. And what that does is it allows you to benefit from the scale that you don't have as a small bank by using a central source to manage many of the aspects of the BSA program.

So that is an example that I believe is in the spirit of what this legislation produces.

Mr. BUDD. Good. Thank you.

So the development of AI, or artificial intelligence, is huge for AML and CFT. But—and this is to all the witnesses—are there any technologies or advanced programs—or maybe it is even this utility that you mentioned—outside of AI that could be added to financial institutions' AML/CFT compliance program that would enhance the detection capabilities of that institution?

Mr. FOX. Mr. Budd, thank you for that question. I think the answer is yes. In fact, I know it is yes.

The key thing to remember about some of these advanced technologies and what we have learned after piloting a number of them is that you have to have experts right along with them, right? You can't just—back to Mr. Scott's point earlier about fintech. Fintech is great, but you have to have the AML expertise along with fintech in order to be able to make this stuff come alive.

We think the biggest challenge for us presently to innovate is, frankly, that the amount of verification and process we have to go through to validate what we are doing on a step-by-step basis under the current regulatory guidance—which was designed, by the way, for large, complex economic models, not BSA/AML—has really, really hampered us.

So I can tell you, for example, in just adjusting our current thresholds in the innovation that we have done today, we used to be able to do that in a matter of weeks. Today, that takes 9 months to a year because of the process of having to go through and prove the negative, if you will, that everything is working perfectly.

I think there is a balance there that has to be drawn in order to be able to—well, let me put it this way: It is very, very hard to innovate in a context like that.

Mr. BUDD. Good. Thank you, Mr. Fox.

Anybody else on the panel?

Mr. BYRNE. Congressman, the thing that we have talked a little bit about but not enough, in my opinion, is the regulators in this space. I think a lot of the problem in terms of burden and challenge has been the moving goalposts.

So, to Bill's point, with technology, a lot of times, you will get second- and third-guessed by the regulators when you want to make a change. They talk a good game about wanting to support innovation. We need to call them out on that. They need to actually be in these institutions and working with the institutions. And I can tell you, at least anecdotally, it doesn't happen as often as it should.

So I think a lot of what happens in the BSA space is banks not understanding what the rules are, and rules are being made up, in terms of different exams, you have different requirements. So I think in technology, specifically, this would be a good place for this committee and other subcommittees to push the regulators to say and do what they have expressed in other hearings. But this is a real problem.

Mr. BUDD. Thank you.

And I believe my time has expired, and I will yield back.

Chairman PEARCE. The gentleman yields back.

And the Chair now recognizes the gentleman from Georgia, Mr. Loudermilk, for 5 minutes.

Mr. LOUDERMILK. Well, thank you, Mr. Chairman. Thank you for this hearing. And I appreciate the panelists being here.

Mr. Bley, I wanted to dig a little deeper into a subject that many have talked about here, the Bank Secrecy Act, especially the currency transaction reporting.

Back when I had a real life before I came here, I owned a small IT business. And because of the unbelievable complexity of our tax laws, I was unwilling to handle my own payroll, because I figured it would be better to pay somebody else to be responsible than go to jail myself, right? So, fortunately, now we are, hopefully, addressing the complexity through our tax reform.

But during that time period, the way we processed our payroll, which was twice a month, is I would actually do a wire transfer to the payroll processing company, which always exceeded $10,000. Quite often, I was also purchasing equipment that I didn't have an account with or credit with an equipment manufacturer, and so sometimes we were wire-transferring $20,000 or $30,000 to buy a piece of network equipment.

The point being is I generated a lot of transfers of cash in the normal operation of business. And since 1970—and it was set at $10,000—we haven't adjusted that. And we began looking at this early on in the year. And, of course, if you look at the rate of inflation, we should be at about $60,000 today, which I have been strongly advocating for. However, I understand we need to strike a balance between what is a reasonable amount to not overburden our financial institutions and what doesn't handcuff law enforcement. And I understand that the Chairman's bill has that set at $30,000.

Now, I spoke with some of the community banks in my district, and they really support this approach, especially the $30,000 level. So I think I am going to be able to be OK with that. One of them said that 78 percent of their cash transactions are below $30,000. Another said 92 percent of their cash transactions are below $30,000. A third, a community banker in Georgia, said they had 21 employees devoted solely to BSA compliance—21. That is a lot for a small community bank. They file 67 CTRs a day, but they almost never receive requests for information from law enforcement based on a CTR.

So my question for you is, do you think that this $30,000 does strike that balance, to give regulatory relief and provide the law enforcement the tools they need?

Mr. BLEY. We believe it does. We don't get the information back to know how useful it is, so it is very difficult for us to put a hard statement on that. But what we think is important is, whatever number we choose here, it has to be accompanied with logical adjustments to the way in which this process works.

One of the facts that we learned from midsize banks is it takes over 4 hours to file a SAR, to create the work, on each individual one, with 150 a month in one small bank. The amount of time to deliver the information is so difficult, is so time-consuming. And moving to a structured and maybe even fully automated approach for delivering data, rather than free text format and a story about the local company that is moving money totally legitimately, would really be a benefit.

So I think most important is—$30,000, $25,000, they all seem like very reasonable numbers in today's dollars, but most important is that the program efficiency and effectiveness accompanies that. And there is a difference between the larger dollar and the smaller dollar.

Mr. LOUDERMILK. What are the typical transactions we see that are below $30,000?

Mr. BLEY. They are essentially the same types of transactions, but they could be ice cream parlors that are open in the summertime moving money back and forth between branches—

Mr. LOUDERMILK. Similar things I experienced in my business.

Mr. BLEY. It is all the same kind of local businesses that are wondering why this is a question for them.

Mr. LOUDERMILK. Another area that I have really been focused on here is when it comes to a cybersecurity concern, which is of grave concern right now. And when I was in the military, I worked in intelligence, and we lived by an adage, which is: You don't have to secure what you don't have.

Would this actually lessen the amount of data that banks are keeping on customers, reducing their risk in the cyber—and even passing on to the Federal Government, which is, of course, a grave cybersecurity risk, in my opinion.

Mr. BLEY. It may reduce the number of detailed investigations, but all the data is still there. The systems are still there, and it is delivering alerts. It is just a difference of how much time is spent on the lower value added information. And the goal of all of us is to focus the maximum attention on the things that matter most. But under the current program, we spend the same amount of time on everything.

Mr. DAVIDSON. Thank you, Mr. Chairman. I yield back

Chairman PEARCE. The Chair now recognizes the gentleman from Arkansas, Mr. Hill, for 5 minutes.

Mr. HILL. I thank the Chairman. I thank the Ranking Member for this good hearing. And it is good to see that the committee is considering a complete rewrite of our bank secrecy and money laundering. We don't want to rush into it since 1970. So it is good that we are taking it up now. And Mrs. Maloney had her decade of work on the topic, which I appreciate. And going on 3 years, I feel her pain three times over, I guess.

I want to go back to my favorite subject with Mr. Poncy and Mr. Fox, already know what it is, which is my feelings on the beneficial ownership provisions in this bill. I am not a fan of yet this different approach. And I understand and I appreciate the efforts to move away from the financial institution burden and try to, again, streamline it and take a different approach, but I still find it concerning. I just want to have some dialog on that. And since I am toward the end of the questioning, you are well rehearsed on it.

I still say the same comment I made about the Treasury's rulemaking that is proposed, which is 25 percent standard, as a former banker for 30 years, is too high. It is ridiculous. If I am going to now structure a transaction to avoid you, it will be under 25 percent. Thanks for telling me what the road map is.

I think this definition is better in the sense that it has this broader definitional context on control, and yet that then becomes

hard to measure and hard to define and makes the definition more murky, which I share the concerns, I think Mr. Perlmutter mentioned at the top of the hearing, that it is overly broad, hard to get our arms around. And it also has these new exceptions, nominee, custodian, agent exception. And yet, of course, that is the prime way that people use to structure an LLC to avoid detection, is through an agent process. And yet you do catch them, maybe with substantial control, but that, again, adds a lot of burden to the process.

And then you have this exception on if they have an operating premise, a physical office in the United States, they are excepted. So now we will just quickly form—buy a pizza company and run everything through the LLC with this, quote, "physical presence" exception.

So I just want to challenge our creative process on this. I do like the idea of the filing concept and the sharing of the data, and I want to go back to my idea again. We are smarter. We have to be able to figure this out. We have all this data on the 1065 that every entity in this country files, and we ought to figure out a way to use the existing tax filing as a way to meet this test.

So I would ask everybody, would you—if my filing, my 1065 with FinCEN, would that comply with this information? Forget the definition for the moment. Would you find that an adequate disclosure?

Mr. Poncy, you are the great author on this, so I yield.

Mr. PONCY. Congressman Hill, you are being too kind. Look, you have been one of the most provocative thinkers on this. And you made, when I was at Treasury, you made us better, and I really appreciated it.

I can tell you what I was trying to say to Congressman Davidson about the rulemaking process, for exactly the points that you have raised, a lot of this requires the type of dialog and the type of expertise that a rulemaking is designed to do, right? And so—and the flexibility that that affords and the ability to make adjustments that do not require congressional legislation is critical. So delegation of some authority to Treasury is going to be key, whether on CDD, which we have done, or whether it is on company information, as the legislation proposes. That delegation is a starting point.

Second, when you look at definitions of beneficial ownership, for exactly the reasons that you have explained, we have this challenge of clarity versus structuring around that clarity. And one of the key issues in that 6-year rulemaking process that may attend how this definition ultimately is formed with the notion of 25 percent is a floor, not a ceiling. There are higher risk scenarios where financial institutions will be expected to go below it, and they do. FATCA is a good example. So 10 percent floor on FATCA. That is a whole separate conversation, but it is a floor. It is not a ceiling.

Second, no matter what the ownership is, you always get a controlling officer for precisely the reason of you can structure under any threshold. So law enforcement was very clear in saying, not just in the United States but globally, we want to make sure that there's a natural person at the end of the investigation that we can squeeze and say, "You need to start answering questions." The rulemaking from Treasury is designed to do exactly that. It is not necessarily—

Mr. HILL. Let me reclaim my time because I want to cover—and Mr. Chairman, Mrs. Maloney had 1 minute 25 over. May I continue?

Mr. PERLMUTTER. Ask Mr. Tipton. You are delaying him.

Chairman PEARCE. Yes, go ahead.

Mr. HILL. Thank you for that. So I hear you on that. But I also want to get one other topic in here, which is the issue of the impact on our secretaries of States on all these exceptions. I know there is a 2-year period for implementation here which isn't satisfactory to Ms. Ostfeld for very good reasons, I think. But, this is shifting burden also to our secretaries of State, our forms in Arkansas, we don't take into account all these exceptions; there is no place for that. And I would really urge you, as you work with our staff, to think through, how can we take the existing data that we have in a secure format that is already machine-readable, to use the IT term, in the 1065 form, where we have K–1's, we know the ownership, we know the name, we have a responsible person, we have a tax filer, we don't have an agent, we have principals, and find a way to let FinCEN access that data.

And thank you, Mr. Chairman. I yield back.

Chairman PEARCE. The gentleman yields back.

The Chair now recognizes Mr. Tipton, from Colorado, for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman.

And I thank the panel. I guess maybe everything has been asked but not by the same person each time. So I do appreciate the comments that you have made.

This has been, I think, a very interesting conversation. I come from a rural district, and a lot of the issues that we face are faced by our community banks. And we have had testimony from Chair Yellen on down in terms of some of the impact, in terms of actual compliance.

I think we also face, in rural areas like mine, the real issue that we are having actually with illicit finance going on, with drug trafficking, cartel activity that is going on. Certainly want to be able to address it but also to be respectful of the burden that is put on our financial institutions.

Mr. Bley, in your testimony, you have spoken to the CDD Rule, which is going to be coming effective, I think, in May of this coming year. Would you speak to how that is going to have some real impact on some of our smaller community banks? I am very cognizant—a small rural bank in my town, just visited with the president of it, and he said: "Hey, good news, we have made three hires. Bad news, they are all compliance." And it is not to certainly diminish the importance of this issue. My home county is one that they are now looking to be able to designate. And we are trying to encourage this just from a law enforcement standpoint, high drug trafficking area; it is a corridor, moving through. But can you speak to the proposed rule and then maybe section 9 of the draft bill to be able to get your thoughts on it?

Mr. BLEY. I think that, when you think of it from a community bank's perspective, it really points to the challenges of the current model because it really applies the cost and the burden on everybody exactly the same way, on every institution the same way. All

want to collect whatever information is necessary, and they will do it. But the reality is they are going to be asking questions of their customers, not only on day 1 in opening an account—their customers will be new process; those customers will be asked at any institution that they are going to, and then they will be need to be asked and refreshed and constantly updated throughout the course of time. And then that will support the investigation analysis down the road, where needed.

And the idea of a centralized structure basically eliminates the burden on the individual smaller institutions and levels the playing field, allows everybody to have the right information available at all times. And so it is just a better model. It affects the smaller institutions more than the bigger ones.

Mr. TIPTON. Mr. Fox, do you have any comments on that?

Mr. FOX. Yes, sir, Congressman. Thank you. I have a lot to say, I guess. I think you are right. One of the things The Clearing House supports is the notion that a Treasury study on the BSA writ large and how it is actually being implemented, part of that is, Does it really make sense to treat community banks in the same way that you would treat a gatekeeping bank like Bank of America? And, today, while the regulatory efforts are different—certainly I can probably attest to that—it is not—in a lot of the ways, the same rules apply, right? And so we ought to think about that. We ought to really think freshly about this: Do these things have to be filed on forms, whether they are electronic forms or not? Can we just get data? It is a lot easier for banks to do that sort of thing.

I think on the beneficial ownership, I really agree with Mr. Hill. Look, we all agree—or at least, I think most agree—that this information is really important for law enforcement purposes. We think that this is how organized crime and transnational crime organizations game the system and even State actors, I think, probably game the system through these entities.

So it seems to me that the best way to do that is we already have a structure that is working in the Code. The problem is we can't share it with anybody because of the Code provisions that prohibit sharing tax information. So could that go to FinCEN? Actually, the Treasury rule, while we supported it, when it was going—and we are happy to comply with it and get the information we have to get—the reality is that we actually are chasing the innocent a bit here because, to be honest with you, if I am a criminal, there is no way I am going to have an ownership structure that is going to get caught in that net.

So we really have to kind of rethink this a little bit, I think. And I think one way to do it is to make that repository at the Treasury or FinCEN so that law enforcement can access that data. By the way, law enforcement can't get at this data without a subpoena right now. I can't just give this beneficial ownership data to law enforcement wholesale. That is customer information that Gramm-Leach-Bliley protects, and there is no Bank Secrecy Act exemption for that, unless it is suspicious or law enforcement has a subpoena to get it.

So we think there is a lot of thinking that could go on in that where you could probably weave a way to take some of that burden off and actually make this a lot more efficient and for not only the

banks or the financial institutions, not only the community banks, but for the entire panoply across the entire regime, which is in, 2017, is what you want, right? Think about it: We are filing narrative reports on terrorism. It doesn't make sense.

I think you really need to think about how the regime itself is set up and how it is working, right? And that, I know that The Clearing House is, stands ready, and Bank of America stands ready to do anything we can to work with the staff to do that.

Chairman PEARCE. The gentleman's time has expired.

I would like to thank all of our witnesses for your testimony today. You have been very gracious with your time and with your answers. We thank you for that.

Miss Poncy, I hope that you have gotten sufficient information for your article today, so thank you for joining us today.

Without objection, all members will have 5 legislative days within which to submit additional written questions for the witnesses to the Chair, which will be forwarded to the witnesses for their response. I will ask our witnesses to please respond as promptly as you are able.

This hearing is adjourned.

[Whereupon, at 4:40 p.m., the subcommittees were adjourned.]

A P P E N D I X

November 29, 2017

Testimony of

Daniel H. Bley,

Executive Vice President and Chief Risk Officer of

Webster Financial Corporation and Webster Bank, National Association

On behalf of the

Mid-Size Bank Coalition of America

before the joint meeting of

Committee on Financial Institutions and Consumer Credit

and

Committee on Terrorism and Illicit Finance

of the

United States House of Representatives

November 29, 2017

Chairmen Luetkemeyer and Pearce and Ranking Members Clay and Perlmutter and members of the Subcommittees, thank you for the opportunity to present testimony on the need for modernization and improvement of the Bank Secrecy Act and Anti-Money Laundering Laws and Regulations. I am Daniel Bley, Chief Risk Officer of Webster Financial Corporation, the holding company of Webster Bank National Association. Webster was founded in 1935 and is headquartered in Waterbury, Connecticut, serving communities throughout New York and New England. Webster has $26 billion in assets and our primary regulator is the OCC.

I am here today representing the Mid-Size Bank Coalition of America, the voice of 83 Mid-size banks in the United States with headquarters in 34 states. MBCA member banks are primarily between $10 billion and $50 billion in asset size, averaging less than $20 billion, and serving customers through more than 10,000 branches in all 50 states, the District of Columbia and three U.S. territories. When combined, the MBCA members maintain in excess of $1.2 trillion in deposits. Mid-size banks most often are the largest local bank serving the basic banking needs of communities, many for more than a century.

Compliance with the Bank Secrecy Act and implementing its regulations is among the most complicated and costly requirements with which a bank must comply and one of the highest

priorities for mid-size banks. MBCA bank members have a deep appreciation for the importance of this regulation and the role of banks in helping the government and law enforcement identify and shut down illicit financial activity in the US and globally. We are committed to ensuring a successful program that effectively reduces financial crime, catches criminals, and protects our customers and our banks. To this end, MBCA banks have collectively invested well over half a billion dollars in technology to manage this effort and are on average estimated to each spend upwards of $8 million per year on staff and support to ensure comprehensive and continuous controls. As mid-sized banks grow, they are investing in more sophisticated technology to ensure continued compliance. In fact, as of today, nearly all of the larger MBCA banks are using or moving to increasingly sophisticated and expensive technology that can detect suspicious activity well beyond the tools of the past. The very high cost of these programs is particularly concerning for mid-size banks, as we have significantly less scale than the large banks against which to spread the costs.

MBCA applauds the ideas introduced with this Bill and believe that its key elements will support improved effectiveness of the programs, benefiting businesses and consumers, law enforcement, and banks. All of the ideas in the Bill have merit. I would like to share MBCA perspectives about three key components of the Bill: the new reporting thresholds, the proposed review of changes aimed at reducing reporting burdens and maximizing information usefulness, and the changes to the Beneficial Ownership data collection.

First, the proposed change in reporting thresholds would be the most immediately and positively impactful in terms of increasing information usefulness and reducing burden. We estimate based on a sample of MBCA banks that the changes would reduce Currency Transaction Report filings at mid-size banks in the range of 50-80% and Suspicious Activity filings by 8-10%. This translates to on average 2-4 full time staff or approximately 10% of BSA staffing, per mid-sized bank, that are working solely on small dollar investigations. In terms of volume submitted to law enforcement, we estimate mid-sized banks file in aggregate upwards of a half a million small dollar reports per year. The proposed threshold levels are still modest if we accounted for inflation since the initial thresholds were established.

Second, I would like to comment on sections 3 and 7 of the Bill, which emphasizes the importance of improving the process and technical innovation. Several good ideas are included, all of which we believe would achieve the objectives: consolidating reporting, providing additional time for filing, tying the thresholds to inflation, analyzing fields for criticality, increasing the use of exemptions, and the application of technological innovations. MBCA members would be happy to share specific ideas from the practitioner's perspective. One such idea is to reduce or eliminate free text format from the reports and move to a more structured and/or automated template. This would reduce preparation time and complexity and normalize reporting. It could lower preparation time by potentially half or more while still ensuring the information provided met the needed requirements. Another idea would be to create a shorter form automated filing approach for the smaller dollar reports. One concerning fact that should be taken into consideration with this efficiency review is that mid-sized bank's false positive alert rate (as generated from transaction monitoring systems) is estimated at over 90%. In other words, we are performing detailed reviews of an excessively high number of transactions that turn out to be unimportant.

To solve for these inefficiencies, we would support the incorporation of an alternative reporting format via an independent, collaborative analytics utility that would allow participating institutions to efficiently expand intelligence and learn from shared data sets about emerging threats and changes in risk profiles. The utility approach can apply advanced machine learning techniques to identify unusual behavior, support more effective use of bank resources, and provide valuable intelligence to the end-users in the law enforcement community. Such a utility is already being deployed on a bank specific basis.

Third, we believe that the proposed change to the Beneficial Ownership data gathering model is very much the right thing to do and it solves multiple issues at several levels. The existing regulation, which goes into effect in May 2018, with financial institutions gathering the Beneficial Ownership data from business customers, is suboptimal in many ways. It allows for uneven application of the standards, creates data integrity risk, puts unnecessary burden on businesses to supply data to multiple institutions, slows the account opening process, and is more costly to maintain. The proposed solution included in this Bill would appropriately address all of those challenges. We appreciate the need for the partnership between public sector and private

sector for addressing illegal financial activities and recognize that there are times when the specific challenge is best solved at the private sector level. We believe strongly that this particular data gathering process will best achieve its intended objective if supported by the proposed centralized public sector led approach.

MBCA banks appreciate the introduction of an expanded role of Treasury in steering the supervision of the Bank Secrecy Act and the support for innovation. The expanded role could support a more transparent and consistent approach to supervision. This is critically needed to ensure common application across the industry. We would hope that this could help reintroduce the risk based approach to supervision that has been missing in recent years, even though it is in the existing Act. With regards to innovation, we believe that banks can build better solutions if there was more coordination between, Treasury, law enforcement agencies, regulators, and financial institutions. Such a forum does not exist today, leaving bankers unaware or uncertain as to what solutions would be acceptable and leaving each regulator to form different approaches. Many MBCA banks have been working constructively with the OCC in recent years to generate thoughtful risk-based, ideas and solutions. Those efforts would be greatly enhanced with a forum that included all key stakeholders. The MBCA supports the use of a collaborative utility that leverages advancements in technology that facilitates productive interaction between banks and regulators to support a unique public-private sector partnership.

In summary, the members of the MBCA appreciate and support the thoughtful Bill and believe that it successfully addresses many of the most important challenges in the current Act. We believe it will benefit individuals and businesses throughout the country, will strengthen law enforcements efforts with higher quality information, and will reduce burden for banks so we can better serve our customers.

Thank you again for this opportunity to testify on behalf of the mid-size banks. I would be happy to address any questions or concerns of the Committees' interest.

Statement of

John J. Byrne, Esq., CAMS

President

Condor Consulting, LLC

Before

The House Subcommittee on Terrorism and Illicit Finance

And the

House Subcommittee on Financial Institutions and Consumer Credit

November 29, 2017

To the Chairmen and members of the subcommittees, I am John Byrne, President of Condor Consulting LLC and the previous Executive Vice President of ACAMS (Association of Certified Anti-Money Specialists). I am extremely fortunate to have been part of the AML (anti-money laundering) community for over thirty years. Whether it has been with the financial sector, or representing the entire community with ACAMS [1], it is clear to me that the private and public professionals who comprise compliance, risk, legal, advisory or regulatory oversight in financial crime prevention functions are all dedicated to stopping the flow of illicit funds. We may disagree with how to achieve this collective goal, but no one can challenge the commitment of all of those involved. It is therefore so important that as improvements are considered to what constitutes the AML infrastructure, all participants are actively consulted. The subcommittees deserve credit for reaching out on your proposal to modernize a series of requirements that are in need for revision and enhancement.

As we all are aware, the statement of purpose to the Bank Secrecy Act (BSA) in 1970 and as amended in 2001 is:

"to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism."

The key is a "high degree of usefulness" a concept that needs this serious review. I have seen, all too often, that the focus under these laws appears to be mainly regulatory compliance and NOT getting immediate access to law enforcement information for investigations and deterrence of criminal abuse of our financial system. As I cover the provisions of the proposal on "Counter Terrorism and Illicit Finance Act" and the "End Banking for Human Traffickers Act of 2017," it is important to note the following:

- Any changes in reporting or recordkeeping will impact current resources, systems and operations
- Information sharing, not only among financial institutions but active sharing between the government and financial institutions is the most essential method of succeeding in attacking all aspects of money laundering and financial crime
- With the vast array of crimes that depend on utilizing the financial sector, any modifications or eliminations of requirements MUST involve active and ongoing consultation with the private sector and their public sector counterparts
- Regulatory uncertainly can result in confusion on priorities, risk aversion that harms legitimate commerce, and loss of critical data to law enforcement, and
- The banking industry has already been a private sector leader in human trafficking detection and prevention, so any proposed regulatory changes need to recognize that clear fact

Modernization of CTRs and SARs (Section 2) and a formal review of both reporting requirements (Section 3)

There can be no question of the importance of data and other information for an effective AML program and environment. As we know, the financial sector is obligated, among many other things, to report cash transactions (CTRs) over $10,000 and file suspicious activity reports (SARS) on certain activities that a financial institution knows or suspects may be a violation of law or has no lawful purpose. CTRs have been part of the AML fabric since 1972, and SARS from 1996 (and prior to SARS, Criminal Referrals since 1984). There is certainly value for law enforcement in both reporting regimes, but I feel that SARS are, without a doubt, more essential to successful investigations, prosecutions and overall detection of financial crime. The subcommittees should be commended for attempting to review and improve these requirements. I would respectfully recommend, however, that there are elements in both reporting regimes beyond the dollar thresholds that should also be considered for improvement.

For example, the financial sector did aggressively advocate for raising the threshold for cash reporting due to the stagnant nature (over thirty years) of the over $10,000 reporting amount. For the various reasons that these subcommittee have identified, such as inflation and the many CTRs that clearly have no law enforcement value, the filing community sought a careful consideration of adjusting the thresholds. At the time, the law enforcement community reacted vehemently against such a move, claiming major loss of investigative data. I believed then, as I do now, that evidence does not support a broad position of all CTRs being valuable. During the previous debate, it was too difficult for the financial sector to continue the advocacy of change and now since there are so many system options for reporting cash activity, the question of how useful it will be to raise the dollar threshold is a valid consideration.

In discussing the idea of raising the reporting threshold for CTRs with a number of my industry colleagues, the recurring theme for a good number of institutions is that raising the threshold will

have little impact on burden because automated systems have been implemented to assist with the identification of reportable cash transactions and the filing of CTRs. I do not have enough data from all impacted filers to assess the pros and cons of raising the CTR filing thresholds in 2017, so if the subcommittees intend to pursue such a plan, I would encourage that all participants in the filing process, especially law enforcement stakeholders, be included in discussions around any potential change.

As for what causes the most difficulty for CTR filers in 2017, I would submit it is the "exemption" process that section 3 contemplates reviewing.

Returning to my thesis that regulatory uncertainty and changing expectations impact the financial sector more than any other portion of AML, exemptions from CTR reporting were first crafted as a sincere effort to eliminate reports that did not have a "high degree of usefulness" in detection of financial crime. Despite a concerted effort to improve the reporting infrastructure, as with other regulatory requirements, there are many examples of financial institutions being fined for administrative failings such as late registration, renewal of exemptions or lack of clarity as to what constitutes an exempted entity. As a result, it is considerably easier to simply file a CTR and avoid regulatory criticism. As numerous enforcement actions against financial institutions will attest to over the years, in many instances, institutions were not penalized for failure to file CTRs, but rather they were penalized for failure to file CTRs resulting from defective implementation of exemptions, leading to the failure to file CTRs.

To both simplify and ensure law enforcement utility, there has been a new call for dramatically changing cash reporting:

Eliminate All CTRS and have impacted financial institutions report cash activity directly to the Financial Crimes Enforcement Network (FinCEN).

With this change, law enforcement would get direct access to cash activity at the level decided by Congress, or by law enforcement with authority provided by Congress, and could develop metrics on what activities, types and other factors are important to the detection of all aspects of financial crime. Such a change quite possibly might eliminate one of the leading industry complaints that has persisted for many years – specific feedback from the government on the usefulness of the millions of CTRS filed annually. It is clear that a change this massive could not be commenced overnight, so creating several "pilot" programs may be the best option.

The subcommittees are also looking at suspicious activity reports (SARs) and propose an adjustment to the reporting thresholds there as well. Section 3 supplements the threshold increase with a direction to review many aspects of SAR reporting and utility. As with CTRs, I have a few comments on what parts of the SAR regime have caused much consternation to the filers.

I completely support the part of section 3 that looks at the continued filing of SARs. As with other issues that have occurred since the creation of SARs, ongoing activity reviews and reporting began with financial institutions innocently questioning the regulatory agencies and FinCEN as to their thoughts on filing SARS on activity that has already been reported. These innocent questions turned into regulation by fiat, based on current guidance and expectations

from regulators and FinCEN. Specifically, the financial sector sought guidance from FinCEN on the question of what to do if a SAR has been filed and there has been no follow-up from law enforcement. Here is the response from October 2000 from the SAR Activity Review:

"Repeated SAR Filings on the Same Activity

One of the purposes of filing SARs is to identify violations or potential violations of law to the appropriate law enforcement authorities for criminal investigation. This is accomplished by the filing of a SAR that identifies the activity of concern. Should this activity continue over a period of time, it is useful for such information to be made known to law enforcement (and the bank supervisors). **As a general rule of thumb**, organizations should report continuing suspicious activity with a report being filed at least every 90 days. This will serve the purposes of notifying law enforcement of the continuing nature of the activity, as well as provide a reminder to the organization that it must continue to review the suspicious activity to determine if other actions may be appropriate, such as terminating its relationship with the customer or employee that is the subject of the filing." (underline emphasis added)

This response was never created as an obligation but rather as guidance to institutions trying to be proactive in reporting possible illegal activity. What happened? This "rule of thumb" became the so-called "90-day rule" and many filers have been formally criticized for not filing a SAR on continuing activity on Day 90.

Another equally frustrating "rule" that really takes the focus away from why SARS are valuable is how to handle the decision NOT to file a SAR. Here is language from the interagency FFIEC AML/BSA Examination Manual:

"The decision to file a SAR is an inherently subjective judgment. Examiners should focus on whether the bank has an effective SAR decision-making process, not individual SAR decisions. Examiners may review individual SAR decisions as a means to test the effectiveness of the SAR monitoring, reporting, and decision-making process. In those instances where the bank has an established SAR decision-making process, has followed existing policies, procedures, and processes, and has determined not to file a SAR, the bank should not be criticized for the failure to file a SAR unless the failure is significant or accompanied by evidence of bad faith."

This coverage is a fair and a rationale view of the difficulty in determining when or if to file a SAR. However, later in the manual, you find this as a directive to examiners:

"SAR Decision Making

Determine whether the bank's policies, procedures, and processes include procedures for:

- Documenting decisions not to file a SAR.
- Escalating issues identified as the result of repeat SAR filings on accounts.
- Considering closing accounts as a result of continuous suspicious activity."

The first bullet has now turned into a "requirement" to have a "no-SAR SAR." Many financial institutions have openly complained about this created obligation and, once again, goes far beyond what the SAR regime is designed to cover.

As for the increase in SAR reporting thresholds, I will leave to current members of financial institutions to comment but will say that many banks file SARs in the hopes that law enforcement will start an investigation. If the dollar amounts are raised, will there be less consideration to lower dollar frauds and financial crime? Also, as we know from our law enforcement partners, terrorist financing models have often occurred at extremely low dollar amounts so will we be losing valuable financial intelligence?

The remaining directives in the bill to the Secretary of the Treasury is an eventual report on SAR related actions and do appear valuable, but I would remind the subcommittees that one topic--the placing of SARs and CTRs on the same form was already tried in the early 1990's and found to not be helpful in data gathering or reporting and did not create any less of a burden on filers. On one more point, I would strongly encourage the subcommittees that it is important that the language of who should be the participants in the reports (Treasury, law enforcement and the affected private sector) have equal input to these studies, along with the regulatory community.

Information Sharing – The Key to Effective Money Laundering Deterrence (Section 4)

The subcommittees are also to be commended for the inclusion of section 4 that fixes a long-held barrier to enhancing information sharing. The provision expands 314 (b) of the USA Patriot Act to ensure that financial institutions can now share information on actions that could be indicative of the many financial crimes (specified unlawful activities) in the money laundering statutes. The previous reading of 314 (b) was unnecessarily limiting and contrary to the original intent behind the legislation. As one who was intimately involved in numerous discussions around information sharing at the time the provision was being drafted into the USA Patriot Act, I was extremely disappointed with the final regulation that, in my opinion, severely limited institutions' abilities to share relevant and meaningful information. This is a welcome expansion and will result in more effective reporting and eventual detection of many forms of financial crime.

The additional portion of this section that requires regulations on expanded information sharing within the same multi-national institution will finally eliminate the barriers to effective risk response of activities throughout an enterprise.

Creation of a process for opinions, priorities and to encourage innovation (Sections 5-7)

With the plethora of questions on application of the various AML laws and regulations, it would be extremely useful for a process to be developed for impacted entities to seek formal opinions on how to traverse guidance, rules and laws. The banking industry has a long history of seeking clarity and I can recall asking that a "BSA Staff Commentary" be developed as far back as 2003 and most likely even earlier. A "no action" process with active consultation of the banking agencies could go a long way to prevent the "policy as rule" issues that I raised earlier in this testimony.

Section 6 on the creation of a priorities list would also be a welcome change to how the financial sector attempts to deal with all of the many financial crimes that can be reported on a SAR. I would again urge that law enforcement and of course, the impacted private sector, be active partners of any consultation on priorities.

Section 7 highlights the subcommittees recognition of the needed focus on the importance of technology to AML detection and prevention. Whether a multi-national company or a community bank, it is important that financial institutions be permitted to utilize technology to become more efficient. One of the common complaints I have heard is that all too often regulators make it difficult for financial institutions to experiment with new tools for fear of regulatory criticism during transitionary periods. This coupled with regulatory criticism for perceived failures because the "new technology" is not operating in the same way as the current, or old, technology, stymies innovation by the financial sector. This section should alleviate those problems.

Assessing Reporting Usefulness (Section 8)

Since the very beginning of the AML regime in 1986, all partners have struggled with how to prove usefulness in order to focus the laws and regulations on the shared ultimate goal---getting critical information into the hands of law enforcement and effectively managing actual risks within financial institutions. This section combines the need for measurements of effectiveness with improving feedback to the financial sector, a mission that will enhance and focus reporting. Currently, FinCEN does an admirable job of feedback with the previously mentioned SAR Activity Reviews and other SAR statistics. The hope is that the section 8 reports will provide data that will continue the collective goal of attacking financial crime in its many facets.

Beneficial Ownership and the CDD Rule (Section 9)

One of the major recent challenges to the financial sector in the AML area has been the impending CDD rule that is required to be implemented by May 2018. With the focus from the Financial Action Task Force (FATF) and the media outcry from the Panama and Paradise Papers, we know that there is universal focus on the mechanisms used to obscure beneficial ownership of corporate vehicles. The CDD rule is in response to the issue of transparency and FATF's critique of US law from the mutual evaluation process, but many have argued with the ease of corporate formation that the rule will not be enough. In addition, because even with the new rule, validation that the identified individuals are actually the beneficial owners is not required, and cannot be performed because of the lack of critical data necessary to perform such a validation, questions have been asked as to the usefulness of these new requirements. Section 9 responds both to the incomplete nature of the Rule and the need for increased transparency by requiring FinCEN to collect this information rather than financial institutions. According to the proposal, the CDD rule would be delayed until Financial Institutions could utilize the information for the purposes of complying with their CDD requirements. For background of concerns regarding the current rule, see the report from a June 2017 meeting of financial institutions hosted by ACAMS. file:///C:/Users/Owner/Desktop/The-Way-Forward-White-Paper%208-17-17.pdf A direct obligation to file with FinCEN is a welcomed proposal.

AML Impact on Financial Access

I would be remiss if I did not also reference the collateral damage that can and does occur with confusion regarding risk in today's AML regime. When the financial sector receives limited advice and counsel regarding how best to manage risk, the logical response by some financial institutions is to exit or not onboard certain classes of customers. The concept, euphemistically known as "de-risking", impacts access to the traditional banking sector and has harmed victims in conflict zones from receiving funding for water, utilities and other resources. Make no mistake that banks and other financial institutions should be free to decide if they can ultimately manage risk, but they shouldn't be forced to exit account relationships because of confusing and conflicting oversight and, unfortunately, the opinions of some examiners examining specific financial institutions that the institution should not bank a type of customer or a specific customer. These subcommittees can provide a valuable service to the AML and the broader global community by adding to the studies and reports an update to the challenges regarding financial access. I spoke on this topic in June in London, referencing the joint work between ACAMS members and the World Bank and have included my comments for consideration here. file:///C:/Users/Owner/Documents/Keynote%20Address_JohnJByrne.pdf

H.R. 2219 (End Banking for Human Trafficking Act of 2017)

Another critical part of the financial sector's proactive work in combatting financial crime is their work addressing the scourge of human trafficking. Perhaps it is partially the lack of public coverage of the financial sector, but the clear fact is that the men and women of the banking industry (and related financial institutions) have a long history of success of responding to human trafficking here in the United States and abroad. At ACAMS alone, the association has awarded recognition to financial institutions such as JPMorgan Chase and financial institutions in Canada such as BMO for working closely with law enforcement on various projects to create and enhance "red flags" and other indicators to assist in looking for and reporting possible human trafficking.[ii] Therefore, I would humbly suggest that the premise regarding financial institutions in this bill is flawed, and that the government could actually learn from their private sector partners how to improve due diligence regarding detecting this crime. If the subcommittees continue to move on HR 2219, I would respectfully ask that they be directed to work with the private sector on language and strategies regarding any new training or reporting.

Conclusion

While not specifically addressed in any of the proposed provisions, I would like to conclude by expanding on a point that I have made in my testimony today. Somewhere between the beginning days of the Bank Secrecy Act and where we sit currently, a good number of requirements from regulators have been imposed through the use of "guidance" and "regulatory expectations." The FFIEC (Federal Financial Institution Examination Council) BSA/AML Examination Manual is the most prominent example of this trend.

The Examination Manual, which was originally designed to provide direction to examiners while conducting BSA/AML examinations AND provide some indication to regulated financial institutions as to what should be expected during the course of such examinations has developed into requirements for regulated entities. In examination after examination, bank examiners cite the Examination Manual as the basis for requirements that banks act in a certain way. Examination reporting, including MRAs, MRIAs and MRBAs (Matters Requiring Attention, Matters Requiring Immediate Attention and Matters Requiring Board Attention) routinely cite provisions of the Examination Manual as the basis for required actions being imposed by the regulators. I would urge the subcommittees to consider whether regulatory agencies should be allowed to continue imposing "requirements" based on what was designed to provide guidance to both examiners and the industry.

I would like to thank the subcommittees for this opportunity to offer mine and my AML colleagues views on the thirty years of AML. The key going forward is to retain and support the concept of private-public partnerships. If all parts of AML work collaboratively, there is no doubt we will be successfully at pursuing and prosecuting financial criminals.

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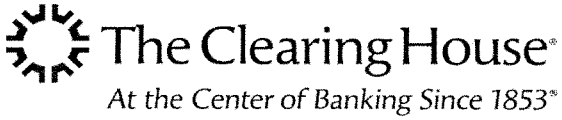
[i] The Association of Certified Anti-Money Laundering Specialists (ACAMS) is the largest international membership organization dedicated to enhancing the knowledge, skills and expertise of AML/CTF and financial crime detection and prevention professionals. Their members include representatives from a wide range of financial institutions, regulatory bodies, law enforcement agencies and industry sectors. http://www.acams.org/

[ii] Here is a small snippet of resources offered by ACAMS on this issue. http://www.acams.org/aml-resources/human-trafficking/



Testimony of William J. Fox
Managing Director
Global Head of Financial Crimes Compliance
Bank of America, on behalf of The Clearing House

Before the U.S. House Financial Services Subcommittees on Financial Institutions and Consumer Credit and Terrorism and Illicit Finance

At the Hearing *Legislative Proposals to Counter Terrorism and Illicit Finance*

November 29, 2017

Chairmen Luetkemeyer and Pearce, Ranking Members Clay and Perlmutter, and distinguished members of the Subcommittees, thank you for the opportunity to testify before you today. My name is William J. Fox and I am the Global Financial Crimes Compliance executive for Bank of America where I am responsible for overseeing from a compliance perspective the bank's efforts to comply with the Bank Secrecy Act and laws and administrative programs that establish and implement our nation's economic sanctions. I have served in that position since 2006. I also serve as Chair of the AML Summit group of The Clearing House, on whose behalf I am testifying today. Prior to joining Bank of America, I served eighteen years at the U.S. Treasury Department. In my last five years at the Treasury, I had the privilege of serving in roles directly relevant to the issues we are discussing today. I served as the principal assistant to General Counsel David Aufhauser, who was a lead point on coordinating the Bush Administration's terrorist financing efforts after September 11th. I finished my career at the Treasury by accepting an appointment from Secretary John Snow as the Director of the Financial Crimes Enforcement Network (FinCEN) where I served from December 2003 to February 2006.

The Clearing House commends the House Financial Services Committee and these two Subcommittees on their leadership regarding our nation's anti-money laundering and countering the financing of terrorism regime (AML/CFT regime). In a post-September 11th world, we believe it is critical to the overall health of our financial system, as well as our national security, to have a robust and effective national anti-money laundering regime that delivers a more transparent financial system and that is designed to help protect that system from abuse here in the United States and around the world. At The Clearing House we are proud of the fact that the financial information provided by our member institutions to law enforcement agencies is a source of highly valuable intelligence in their critical efforts to keep our nation safe from terrorism and criminal organizations. Financial intelligence is among the most valuable sources of information for law enforcement because money doesn't lie, money leaves a trail, and money establishes connections. It is not an overstatement to say that the intelligence provided by financial institutions under our AML/CFT regime is critically important to our national security.

The United States AML/CFT regime is primarily codified in a collection of laws commonly known as the Bank Secrecy Act (BSA). A majority of these laws were enacted in 1970. They require financial institutions to keep certain records and make certain reports to the government, including reports on cash transactions greater than $10,000.00. The stated purpose for the establishment of the regime was to provide highly useful information to regulatory, tax and law enforcement authorities relating to the investigation of financial crime.[1] The Congress

[1] *See* 31 U.S.C. § 5311, which states that "[i]t is the purpose of this subchapter [the BSA] to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." Note that the last clause was added by the USA PATRIOT Act in 2001.

gave the authority to implement the regime to the Secretary of the Treasury and not to other agencies, thereby designating an agency with both financial and law enforcement expertise as its administrator. In the 1990s, the law was amended to require financial institutions to detect and report their customers' "suspicious" transactions. In addition, the Bank Secrecy Act gave the Treasury examination authority over financial institutions to assess their compliance with the law, which Treasury has since delegated to the various regulatory authorities according to institution type.[2] The Clearing House's member institutions can be subject to no fewer than five different regulatory authorities under the Bank Secrecy Act: the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit and Insurance Corporation, the Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the Commodities and Futures Trading Commission.

Following the tragic events of September 11th, the Congress passed and President Bush signed the USA PATRIOT Act of 2001. Title III of that Act was devoted to the financial aspects of the challenges of tracking and combating terrorism and terrorist organizations. The USA PATRIOT Act amended the Bank Secrecy Act by providing additional tools to meet those challenges, such as the authority to designate jurisdictions, persons, entities and products and services as being of primary money laundering concern. The Act also imposed additional requirements on financial institutions to, among other things, verify and record information relating to the identity of their customers; conduct enhanced due diligence on correspondent banks, private banking clients and foreign senior political figures; and to develop anti-money laundering programs with minimum requirements designed to guard against money laundering.

The enactment of the USA PATRIOT Act, more than 16 years ago, was the last time the Congress conducted a broad review or adopted significant amendments to our national AML/CFT regime. The current suspicious activity reporting regime remains largely unchanged since it was developed in the mid-1990s. Similarly, the large cash reporting regime remains largely unchanged since the Bank Secrecy Act was originally enacted in 1970. Just think of what has happened since that time. Today, most banking business can be conducted from your mobile phone. Both money and information move in nano seconds, and it is simple and common to move money across borders in a way never seen before. The suspicious reporting regime, which was originally based on a concept of providing law enforcement a narrative analytical lead, is today used as a data source for data mining by FinCEN and law enforcement. Even the concept of what constitutes money is evolving; today anonymous crypto-currencies are traded outside the formal financial system in a way that makes it increasingly difficult to know the source or purpose of the funds being moved. The Clearing House believes it is time to take a fresh look at our AML/CFT regime. We are fully committed to helping the Congress and various government agency stakeholders undertake this reassessment. We believe we are in a

[2] *See* 31 CFR § 1010.810(b).

moment where we can collectively make this regime more effective, efficient and relevant to the challenges we face in 2017.

While no official figures have been calculated, it can safely be estimated that The Clearing House's member institutions collectively spend billions of dollars annually discharging our responsibilities under our nation's AML/CFT regime. While financial institutions are committed to this work, we have come to believe that the mechanisms through which we discharge our responsibilities under our national AML/CFT regime are highly inefficient, and that a significant portion of what we do and what we report ultimately as effective as they could be in achieving the desired outcomes of the regime.[3]

To illustrate, let me give you some insight into our work at Bank of America. The goals of our financial crimes program can be articulated pretty clearly and succinctly: 1) First, be effective. That is, do all we can to protect our company by preventing the abuse of its products and services by criminals and terrorists and, at the same time make sure we get actionable information about suspected criminals and terrorists into the hands of officials who can do something about it. 2) Be efficient. Do this work in the most efficient way we can to fulfill our responsibilities to our shareholders. 3) Reduce the administrative impact these rules have on our customers who depend on financial institutions for their daily business.

To achieve these goals, I have a team of over 800 employees world-wide fully dedicated to anti-money laundering compliance, detection and investigation work, as well as economic sanctions compliance, filtering, blocking and rejecting.[4] Today, a little over half of these people are dedicated to finding customers or activity that is suspicious. These employees train our customer-facing employees so they can escalate unusual activity; tune our detection systems to generate investigative cases; assess and analyze the financial crimes risks inherent in and the controls placed over our products and services; resolve investigative cases; and, when appropriate, report suspicious activity to the government. They also work on strategic initiatives aimed at understanding and reporting on significant financial crimes threats, such as foreign terrorist fighters; human trafficking, drug trafficking and other trans-national crime; and nuclear proliferation. The tools provided by the USA PATRIOT Act, particularly tools relating to

[3] *See supra* Footnote 1. *See also* the FFIEC Bank Secrecy Act / Anti-Money Laundering Examination Manual – 2014, Introduction on p. 7, which states that "[t]he BSA is intended to safeguard the US financial system and the financial institutions that make up that system from the abuses of financial crime, including money laundering, terrorist financing, and other illicit financial transactions . . . a sound BSA/AML compliance program is critical in deterring and preventing these types of activities at or through banks and other financial institutions."

[4] This number does not include other employees dedicated to anti-money laundering or economic sanctions compliance in Bank of America's lines of businesses, operations or technology teams. The over 800 employees in Global Financial Crimes Compliance at Bank of America is greater than the combined authorized full-time employees in Treasury's Office of Terrorism and Financial Intelligence (TFI) and the Financial Crimes Enforcement Network (FinCEN).

information sharing under Section 314(b), have been extremely valuable in these efforts. We have been told anecdotally by various policy and law enforcement agencies that the reporting we provide on these issues has been highly useful.

The remaining employees on my team and the vast majority of employees dedicated to these efforts in the business and operations teams that support our program are devoted to perfecting policies and procedures; conducting quality assurance over data and processes; documenting, explaining and governing decisions taken relating to our program; and managing the testing, auditing, and examinations of our program and systems. Our focus on these processes has had positive effects; it has brought discipline and rigor to our work. We spend significant time collecting defined enhanced due diligence on broad categories of customers that have been deemed high risk in regulatory guidance manuals, while we know from our own activity monitoring of their actual behavior that many of our customers that fall into those categories do not present high risk. Today compliance requires enhanced efforts relating to these broad categories that increase compliance costs and distract from those customers that present real risk. The danger, which this testimony delves into further below, is that at some point it becomes easier to exit certain businesses, or decline to serve legitimate customers, because the benefits of serving such markets or customers are outweighed by the cost. When legitimate businesses or individuals cannot be served by mainstream financial institutions, it harms economic growth and job creation. Indeed, the Federal Financial Institutions Examination Council's (FFIEC) BSA/AML Examination Manual, which provides the blueprint for federal banking examiners to examine our programs, focuses on banks' programs, not on providing actionable, timely intelligence to law enforcement, as the critical means to deter and prevent money laundering and terrorist financing.[5]

A core problem is that today's regime is geared towards compliance expectations that bear little relationship to the actual goal of preventing or detecting financial crime. This means that one can have a technically compliant program, but that program may very well still not be effective at preventing or detecting – and reporting – suspected financial crime. These activities require different skill sets, tools, and work. All of this begs the question: what is the ultimate desired outcome for our nation's AML/CFT regime in a post-September 11th world in 2017? What does our government want from the anti-money laundering programs required by the Bank Secrecy Act in financial institutions? What does it mean to have an *effective* anti-money laundering program in a financial institution?

[5] *See* the FFIEC Bank Secrecy Act / Anti-Money Laundering Examination Manual – 2014, Introduction on p. 7, which states that "[b]anking organizations must develop, implement, and maintain effective AML programs that address the ever-changing strategies of money launderers and terrorists who attempt to gain access to the U.S. financial system. A sound BSA/AML compliance program is critical in deterring and preventing these types of activities at, or through, banks and other financial institutions."

The Clearing House believes there is much work to do to improve our framework and make it both more *effective* and more *efficient*. We believe that measurable outcomes or goals should be clearly and specifically defined for each component of our nation's AML/CFT regime (including the anti-money laundering programs in financial institutions), and then agreed upon ways to measure the achievement of those outcomes or goals should be set and reported. From these outcomes or goals, priorities should be set for the AML/CFT regime. We believe this is the best way to build a regime that is ultimately *effective* in achieving the desired outcome of a robust and dynamic national AML/CFT regime that can efficiently and quickly adapt to address new and emerging risks. For financial institutions, we believe that such an exercise would change the focus from technical compliance with regulations or guidance, to building anti-money laundering programs that achieve the desired and measurable outcomes or goals of the regime. And we believe that setting measurable outcomes or goals, and then tracking progress to the achievement of these goals, is the best way to build anti-money laundering programs and a national AML/CFT regime that are both *effective* and *efficient*.

To that end, in early 2017, The Clearing House issued a report offering recommendations on redesigning our Nation's AML/CFT regime to make it more effective and efficient. This report reflects input from a wide range of stakeholders and recommends reform through prioritization, rationalization and innovation.[6] Many of the concepts found in the report are reflected in the "Counter Terrorism and Illicit Finance Act," which is one piece of draft legislation we are discussing today. Our specific proposals are set forth below.

Prioritization

- ***The Clearing House believes our nation's AML/CFT regime needs a "captain" to lead the improvement and enforcement of the regime, define measurable desired outcomes and set national priorities. We support the concept in the draft* Counter Terrorism and Illicit Finance Act *that would require the Treasury Secretary to set national priorities for our AML/CFT regime and study Treasury's delegation of examination authority for complex, cross-border institutions that file a significant number of BSA reports.***

[6] *See* The Clearing House, A New Paradigm: Redesigning the U.S. AML/CFT Framework to Protect National Security and Aid Law Enforcement, ("TCH AML/CFT Report"), (February 2017), available at https://www.theclearinghouse.org/~/media/TCH/Documents/TCH%20WEEKLY/2017/20170216_TCH_Report_AML_CFT_Framework_Redesign.pdf. *See also* TCH press release "The Clearing House Publishes New Anti-Money Laundering Report," (February 16, 2017), *available at* https://www.theclearinghouse.org/press-room/in-the-news/20170216%20tch%20aml%20cft%20report.

Our national AML/CFT regime suffers from the absence of an effective "captain" empowered to lead improvement and enforcement of the regime and to set national priorities and define desired outcomes. As referenced above, there are no fewer than eight (8) different entities with delegated responsibility to supervise, examine or audit financial institutions, as that term is defined in the Act. Each of the agencies has a different mission and focus.[7] The banking agencies understandably tend to supervise and regulate with a view towards the safety and soundness of the institutions they regulate. The market regulators, on the other hand, regulate with an emphasis on ensuring market integrity. While the three (3) federal banking agencies have worked diligently with their counterparts to develop consistent approaches and guidance, which has been memorialized in the FFIEC BSA/AML Examination Manual, there are still significant differences in approach from each of these entities. Law enforcement authority is no less disjointed. There are five principal law enforcement agencies with authority to investigate money laundering — the Federal Bureau of Investigation, Homeland Security Investigations, the U.S. Secret Service, the Criminal Investigation Division of the Internal Revenue Service and the Drug Enforcement Administration. Each of these agencies has different albeit overlapping missions, and different priorities relating to our national AML/CFT regime.

There is evidence of how these competing and conflicting missions and priorities have negatively impacted one aspect of our global financial system: global correspondent banking, which is a principal way funds flow through the financial system. A recent set of articles in *The Economist* details the unfortunate consequences that the misalignment in AML/CFT expectations and standards has created as financial institutions have worked to balance fear of enforcement and supervisory expectations with the AML compliance costs of maintaining a global business. As the writers note, "[d]erisking chokes off financial flows that parts of the global economy depend on. It undermines development goals such as boosting financial inclusion and strengthening fragile states. And it drives some transactions into informal channels, meaning that regulators become less able to spot suspicious deals … The blame for the damage that derisking causes lies mainly with policymakers and regulators, who overreacted to past money-laundering scandals."[8]

The Clearing House believes that the Treasury should take a preeminent role in setting policy, coordinating and setting priorities, as well as in examining institutions' compliance with,

[7] Agencies with examination or audit authority are the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit and Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, the Financial Industry Regulatory Authority, the Commodities Futures Trading Commission and the Internal Revenue Service.

[8] *See* "The great unbanking: swingeing fines have made banks too risk-averse," *The Economist*, July 6, 2017, *available at* https://www.economist.com/news/leaders/21724813-it-time-rethink-anti-money-laundering-rules-swingeing-fines-have-made-banks-too-risk-averse. *See also* "A crackdown on financial crime means global banks are derisking," *The Economist*, July 8, 2017, *available at* https://www.economist.com/news/international/21724803-charities-and-poor-migrants-are-among-hardest-hit-crackdown-financial-crime-means.

and enforcing, our national AML/CFT regime. Treasury is uniquely positioned to balance the sometimes conflicting interests relating to national security, the transparency and efficacy of the global financial system, the provision of highly valuable information to regulatory, tax and law enforcement authorities, financial privacy, financial inclusion, and international development. Accordingly, The Clearing House supports the provision in the proposed *Counter Terrorism and Illicit Finance Act* that requires the Treasury Secretary, in consultation with law enforcement, national security, and others as deemed appropriate, to establish priorities for the U.S. AML/CFT regime, presumably in much the same way as our intelligence agencies establish priorities. These priorities would in turn be used to form the basis for the supervision and examination of financial institutions' AML programs. The priorities would also position financial institutions to detect and analyze the matters that are most important to the government. In addition, one of the key recommendations in The Clearing House report is that FinCEN should reclaim sole supervisory authority for certain large, multinational financial institutions. Accordingly, we support the provision in the bill that requires a report on the Secretary of the Treasury's delegation of examination authority for financial institutions that pose complex cross-border policy issues and file a substantial number of Bank Secrecy Act reports, which is a useful first step in this regard.

Rationalization

- ***The current regime needs to be rationalized in order to ensure information of a high degree of usefulness is reported to law enforcement and barriers to information sharing are removed. In addition, feedback from the government regarding the usefulness of the BSA reports financial institutions file would enable them to better tune their systems and help ensure they are focused on matters that are important to our national AML/CFT regime. The Clearing House supports the draft legislation's study of current BSA reporting requirements, enhancements to enterprise-wide suspicious activity information sharing, and inclusion of a federal beneficial ownership recordkeeping requirement.***

The Clearing House is proud that financial institutions' reporting under the Bank Secrecy Act has been highly useful to agencies that are focused on terrorism and financial crime. We also take pride in ensuring that our members' customers can conduct their financial transactions in a safe, secure and private manner. At Bank of America, we endeavor to report only when we truly believe that a customer's transactions or activity is suspicious, or when otherwise required by law. We have sophisticated systems and processes in place that assist us in identifying potentially suspicious transactions or activity. Due to our size and geographic footprint, we are among the largest filers of currency transaction reports and suspicious activity reports in the United States. Other than anecdotes about the usefulness of our reporting in particular cases (which are very much appreciated), we do not receive direct feedback from the

government on whether the bulk of our reporting is useful. At Bank of America, in order to try to measure the usefulness of our reporting, we have developed a metric tracking when we get follow-up requests from law enforcement or regulatory agencies for back-up documentation relating to our reports. Today we receive such requests in connection with roughly 7% of the suspicious activity reports we file. From my time in the government, I know that these reports are used in many different ways, some of which do not require back-up documentation requests. Based on that knowledge, I believe our reporting is far more effective than the metric noted seems to indicate. However, I do not know that for sure. This is important because we tune our systems based upon the decision to file a report. The danger of tuning systems without some validation from the ultimate users of the report is that we could be creating an echo chamber. The sharing of the general usefulness of the reporting we provide would significantly help us tune our systems more effectively. This does not have to be a complicated metric; just a simple thumbs up or down on whether a particular report was useful or not would provide meaningful assistance to financial institutions.

Measuring the usefulness of suspicious activity reporting would also help the government rationalize whether the reporting – which may be technically required under the law – is ultimately useful in achieving the goals of our AML/CFT regime. We are pleased to see the draft legislation would require a Treasury-led study to review the current reporting requirements under our AML/CFT regime.

The authorized and appropriate sharing of information between the government and the private sector as well as the sharing of information between and among financial institutions is critical to efforts to address terrorism and financial crime. We commend the Treasury, FinCEN, and other law enforcement agencies that have supported and facilitated innovative initiatives taken by financial institutions, including ours, to address problems like terrorism, human trafficking and other transnational crime. Such information sharing not only makes our programs more effective and efficient, it focuses our resources on what we believe are the most important matters. This sharing also helps us focus on people and entities that are attempting to abuse the products and services of our institutions, which is where our focus should be. We support the efforts to remove unnecessary barriers to information sharing, including those in the proposed legislation that would remove barriers to the sharing of information related to suspicious activity across financial institutions and within financial institutions on an enterprise-wide basis.

Relatedly, there are interesting public-private sector partnerships forming in various countries around the world. One such program is the UK's Joint Money Laundering and Intelligence Task Force (JMLIT), which brings together the private sector and financial law enforcement to address significant matters relating to financial crimes. Bank of America, and other major U.S. banks operating in the United Kingdom participate in the JMLIT, and we can

attest to its effectiveness. This program, and others like it, could be instructive as the United States works toward enhancing the effectiveness of its AML/CFT regime.

Finally, we support Congressional efforts to enact legislation that establishes a beneficial ownership reporting requirement on closely held, non-transparent legal entities. Financial institutions will soon be required to collect such information from their customers, yet the Federal Government, and importantly law enforcement, still does not have ready access to such information to assist them with their investigations. Financial institutions could utilize copies of their customers' filing documents to assist them with their customer due diligence efforts. Ultimately, this gap must be filled in order to address the flaws in the current regime – something The Clearing House is pleased to see has been incorporated into the draft AML/CFT legislation. We also support the inclusion of access to reported information for financial institutions to assist them with their customer due diligence compliance efforts.

Innovation

- ***One of the most pressing needs related to our national AML/CFT regime is to enable financial institutions to innovate their anti-money laundering programs. To that end, The Clearing House supports language in the draft bill encouraging innovation within an AML program as well as the provision requiring FinCEN to institute a no-action letter like process.***

One of the most pressing needs we face in enhancing our national AML/CFT regime is to enable financial institutions to innovate their anti-money laundering programs and coordinate that innovation with their peers. Let me give you an example, at Bank of America we have implemented robust transaction monitoring, sophisticated screening and filtering, and intelligence systems and processes all of which assists us in detecting suspicious activity and complying with our nation's economic sanctions. In 2010-11, we developed an innovative way to process and connect the disparate "events" that are produced by these systems, as opposed to reviewing each "alert" from these systems and resolving them in the order in which they were generated. This enabled us to create investigative cases that contained more holistic information about potentially suspicious activity and connect parties that were previously unconnected. This innovation allowed us to push more information through our systems that could be efficiently processed by machines. We also kept the "events" live for a much longer period of time, understanding that money laundering generally involves patterns of behavior, not single events. Since 2010-11, we have taken steps to significantly improve the stability and performance of our systems; however, we have found further innovation challenging to achieve. One reason for this is that changes to the parameters of our systems are now subject to the same validation rigor employed against complex economic models. These changes to our systems, which used to take weeks, now take anywhere from nine months to a year to implement. The same employees

whose expertise is needed to innovate are the employees who are now required to validate the changes we would like to make to our parameters. Like most financial institutions, we have begun to pilot innovative technologies commonly referred to as artificial intelligence. But in order to make AI work, you need the substantive expertise to develop the innovative processes. We think Christopher Mims aptly described the limitations of today's sophisticated algorithms in his article titled "Without Humans, Artificial Intelligence is still Pretty Stupid" in the *Wall Street Journal.*

The Clearing House supports language in the draft bill encouraging innovation within an AML program. We also support the bill's efforts to require FinCEN to institute a no-action letter like process, similar to the process instituted by the Securities and Exchange Commission. While rulemaking and the issuance of guidance are cumbersome processes that do not always promote innovation or dialogue with the industry, a no-action letter process could be more effective. It would allow individual financial institutions to ask particular questions about actions they plan to take, thereby spurring innovation; provide quick answers, thereby nurturing innovation; and increase the flow of information from industry to FinCEN.

Financial institutions need to be able to innovate alone or in concert with their peers as new technologies emerge that allow for both efficiency gains and improved threat assessments. Advances in technology have the potential to truly change the way in which institutions approach illicit finance threats, which can only enhance our nation's AML/CFT regime. It will be important for the government to encourage this innovation and provide responsible yet sufficient leeway to test and utilize these new systems and processes.

A focus on achieving measurable outcomes established for financial institutions' anti-money laundering programs will only encourage and enable this innovation. Another way to say it is that the government should define WHAT needs to be accomplished. The financial institutions should be given the freedom to figure out HOW to accomplish the WHAT in the most effective and efficient way that focuses on the people and entities attempting to abuse the system, and protecting their innocent customers.

I thank you for the opportunity to testify before you today on these important issues. The Clearing House stands ready to assist your efforts to modernize and enhance the effectiveness and efficiency of our nation's AML/CFT regime. We look forward to working with you on this important endeavor. I am happy to answer any questions you may have.

global witness

House Financial Services Subcommittee on Terrorism and Illicit Finance and Subcommittee on Financial Institutions and Consumer Credit

Hearing entitled:
A Legislative Proposal to Counter Terrorism and Illicit Finance

November 29, 2017

Testimony of Stefanie Ostfeld, Deputy Head of US Office, Global Witness

Good afternoon Chairman Pearce, Chairman Luetkemeyer, Ranking Member Perlmutter and Ranking Member Clay. Thank you for holding this important hearing and inviting Global Witness to testify.

My name is Stefanie Ostfeld and I am the Deputy Head of Global Witness' US office. We are an international non-governmental organization with offices in Washington, DC, London and Brussels. For almost twenty five years Global Witness has uncovered corruption in some of the poorest countries in the world, focusing on the role of natural resources in driving state looting and conflict. Through hard-hitting reports and investigations we have exposed how timber, diamonds, minerals, oil and other natural resources in some countries have incentivized corruption, destabilized governments and led to war.

Our experience shows corruption isn't something that just happens in developing countries. Corruption on the scale that we see in our investigations could not happen without the actions of global facilitators. What enables corruption is a financial system that makes it easy to hide and move suspect funds around the world. Our research shows that corruption simply cannot take place without the willingness of the financial system to accept corrupt funds; provide secrecy that allows corrupt individuals to hide their identities and their money; and finance corrupt deals. By 'financial system' we mean not only banks, but those who provide 'professional services': the trust and company service providers, accountants and lawyers whose basic business is to set up the corporate and trust structures behind which the corrupt hide. We also mean the regulatory structure in which they all operate: one which not just permits but encourages secrecy, whether onshore in major financial centers or offshore in the island havens.

This secrecy isn't only utilized by the corrupt; it is what enables the proceeds of all types of crimes—from

drug smuggling to human trafficking to organized crime—to move through the financial system. It is the same secrecy in the financial system that allows money to be funneled to terrorist organizations.

Global Witness welcomes the Committee's interest in requiring transparency around the beneficial owners of American companies and strengthening US anti-money laundering laws to counter terrorism and illicit finance. We believe this is a necessary step to stop the US from being a safe haven for the world's dirty money.

I offer the following testimony today to provide Global Witness' views on how to strengthen the US anti-money laundering framework and offer specific recommendations on how to strengthen the Committee's draft legislative proposal titled "Counter Terrorism and Illicit Finance Act" dated November 14, 2017.

Recommendations on the Discussion Draft Dated November 14, 2017

Increase transparency of corporate formation procedures

1. Ensure that domestic law enforcement has access, including federal, state and local, to FinCEN's database of beneficial ownership information. This shouldn't require a subpoena.
2. Ensure that foreign law enforcement has access to beneficial ownership information so that it can be used in criminal and civil prosecutions.
3. Require foreign nationals to file their beneficial ownership information with FinCEN, including submitting a scanned copy of the relevant pages of their non-expired passport to FinCEN and define the term "applicant."
4. Add an enforcement mechanism to the discussion draft. This could be done by making the state incorporation process dependent on beneficial ownership information being provided to FinCEN. It could potentially be done by ensuring FinCEN has the authority to regulate in this area in order to have current listings from the states about all of the corporations and LLCs that are active.
5. Allow identification for beneficial owners to include non-expired state issued identification to meet the requirement if they do not have a non-expired US driver's license or passport.
6. Banks should begin to implement the customer due diligence (CDD) regulation on time, in May 2018.

Reporting requirements

7. Do not raise the CTR and SAR reporting thresholds as it would make it easier for drug traffickers and terrorists to move cash without alerting authorities.
8. It is not appropriate for Treasury to assess the utility of SARs and CTRs for law enforcement and the requirement should be removed from the bill.

Treasury's role in coordinating AML/CFT policy and examinations across government

9. FinCEN should not be setting AML/CFT priorities for banks on an annual basis or otherwise.

Improve information sharing efforts among financial institutions

10. Permit banks to share SARs with any branch or affiliate, but only insofar as the prohibition on banks disclosing the existence of a SAR to clients is a legal requirement applicable to any branch or affiliate with whom SAR information is shared.

Encourage the use of technical innovation

11. Use of new technology should be encouraged, but must be done responsibly. A section of Treasury should be created or tasked with reviewing, approving and monitoring the use of new technology by financial institutions. There should not be a safe harbor provision.

Additional opportunities to reform the current BSA regime and anti-money laundering requirements

12. Formation agents and others who are paid to set up corporations, trusts or other legal entities should have anti-money laundering obligations.
13. Congress should lift the "temporary" exemption created in 2002 excusing certain categories of persons from complying with the 2001 law requiring them to establish anti-money laundering programs, including "persons involved in real estate closings and settlements." A deadline should be established to bring everyone into compliance with the law, which is now 16 years old. As a part of this effort, the Treasury Department should also require public disclosure of the beneficial owners who ultimately own companies purchasing real estate throughout the US.
14. Congress should require transactional lawyers to have customer due diligence and record keeping requirements. The law must specify what due diligence lawyers have to carry out before accepting a client, require lawyers to identify higher risk clients and require them to report suspicious transactions to the authorities.

Kleptocrats, drug traffickers and other criminals regularly exploit gaps in US law to hide behind anonymously-owned American companies to access the US financial system and property market

Last year's Panama Papers and this year's Paradise Papers have shown the world that anonymously-owned companies are a large problem and provide unprecedented insight into the shadowy system of tax havens, lawyers, company service providers and anonymous companies. It is common for the corrupt and other criminals to layer anonymously-owned companies, with one owning another and so on, often across jurisdictions, in order to further distance the bad actor from the act and to make it harder for law enforcement to figure out who is ultimately behind the company.

This isn't a new problem. Global Witness first exposed it in our 2009 report, Undue Diligence,[1] and in 2011 the World Bank found that opaque company structures were used in 70% of the grand corruption cases they studied over the last 30 years. Furthermore, contrary to the common misperception that this type of secrecy is mainly provided by sunny tax havens in the Caribbean, the US is at the heart of the problem.[2] A 2014 academic study found that many US states are among the easiest places in the world to set up an untraceable company—even for inquiries that sounded like a front for terrorism or that should have raised a corruption risk.[3]

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[1] https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/banks/undue-diligence/

[2] Halter, E. M., Harrison, R. A., Park, J. W., Does de Willebois, E. v., & Sharman, J. (2011). *The Pupper Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It.* Washington DC: Stolen Asset Recovery Initiative- The World Bank and UNODC.
https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf

[3] Findley, M., Nielson, D., & Sharman, J. (2014). *Global Shell Games: Experiments in Transnational Relations, Crime and Terrorism.* Cambridge: Cambridge University Press. http://www.globalshellgames.com/

Importantly, the ability of criminals to hide and move money does not just fuel corruption overseas—it hurts people here in the United States as well. Global Witness' report The Great Rip Off has looked at a whole host of criminals who the authorities are trying to stop, from drug gangs to terrorists to tax evaders to credit card scammers. They had two things in common—they were all anonymous company owners, and they were all hurting US citizens. For example, an Ohio school district employee used a web of fake companies to abuse his position and bill for millions of dollars' worth of services that school kids never received. And Texas lawyers used sham companies from Delaware and Nevada to trick elderly people into investing their life savings in worthless enterprises.[4]

Anonymously-owned companies have been used to further human trafficking schemes too. A gang used anonymous companies from Kansas, Missouri and Ohio to trick victims from countries overseas into a $6 million dollar human trafficking scheme throughout the US.[5] According to Polaris, a leader in the global fight to eradicate modern slavery:

> "In 2016, [we] analyzed public information to identify human trafficking occurring in businesses fronting as massage parlors in Tampa, Honolulu, Houston, San Francisco, Albany, Columbus, Oklahoma City, and Fairfax County, VA. The inability to identify beneficial ownership was a recurring challenge in every location...In order to ensure accountability for human trafficking, Congress must pass legislation that requires corporations and LLCs to disclose their beneficial owners, thereby guaranteeing that law enforcement has access to this information. Until police and prosecutors can identify the individuals operating illicit massage businesses, criminals engaged in human trafficking will continue acting with impunity across the United States."[6]

Anonymously-owned American companies have also been used to threaten our national security. A US-Afghan contractor funneled at least $3.3 million of US taxpayer dollars to notorious Afghan powerbrokers, who deliberately hid their ownership interests in companies within the contractor's network to avoid association with the insurgency. These individuals in turn funded the purchase of weapons for the Taliban and insurgents.[7] The Iranian government hid behind an anonymous New York company to conceal its ownership of a 5th Avenue skyscraper, in direct breach of sanctions.[8] In a recent report, the Government Accountability Office (GAO) revealed it was unable to identify ownership information for about one-third of the government's 1,406 high-security leases as of March 2016 because ownership information was not readily available for all buildings.[9]

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[4] https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/great-rip-off/
[5] https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/great-rip-off/
[6] Fact sheet, Polaris, 2017 https://thefactcoalition.org/wp-content/uploads/2017/08/Polaris-AnonymousCompanies-Fact-Sheet-10-17-2016-FINAL.pdf
[7] https://www.globalwitness.org/en/reports/hidden-menace/
[8] https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/great-rip-off/
[9] http://www.gao.gov/products/GAO-17-195

In 2016, Global Witness published an undercover investigation into the role of anonymously-owned companies in money laundering that aired on 60 Minutes.[10] We sent an undercover investigator into 13 New York law firms. He posed as an adviser to an unnamed African minister of mines who wanted to secretly bring suspect funds into the US to buy a mansion, a yacht, and a jet. The results were shocking: 12 of the 13 lawyers provided suggestions on how to move the money using anonymous shell companies and trusts. Eleven of them suggested using American shell companies as part of the structure to hide the fictitious minister's identity.

Many of the lawyers indicated that they would have to do further checks before agreeing to take our investigator on as a "client," no money was exchanged and nobody broke the law. But what is really remarkable about our findings is how consistent the lawyer's suggestions were during the meetings with our investigator. It goes to show you that — from the Panama Papers to our investigation — it is not about the behavior of individuals, however odious. It's about what is wrong with the law, which makes it far too easy for corrupt officials and other crooks to hide behind the secrecy of anonymously-owned companies.

The Financial Action Task Force (FATF), which the US helped to set up and sets the global anti-money laundering standards, issued an evaluation of the US in 2006 that criticized the US for failing to collect beneficial ownership.[11] In December of last year, FATF issued another evaluation of the US that demonstrates that little progress has been made over the last ten years to address this problem. It identified the "lack of timely access to adequate, accurate and current beneficial ownership information" as the Achilles heel in US efforts to combat money laundering and terrorist finance.[12]

Currently, there is not one state that collects beneficial ownership information for the companies it incorporates. Since incorporation happens at the state-level, it varies from state to state what is collected. Some states collect shareholder information, but many do not even collect this. However, the problem with shareholder information is shareholders can be other companies with hidden owners or nominees, which are people who essentially rent out their name, legally, so that the real owner's identity can be kept hidden.

States didn't set out to permit the creation of anonymous companies. Rather, criminals have figured out how to take advantage of gaps in the law. But states have been aware of this problem for many years and have done nothing to address this problem on their own.

The US has fallen behind as action is taken around the world

Momentum has been building globally to deal with this problem. In 2013, the then-G8 endorsed broad principles about beneficial ownership disclosure and created national action plans for how to address

[10] https://www.globalwitness.org/shadyinc/
[11] http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf
[12] http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf

the problem domestically. In 2014, the G20 agreed to high level principles on beneficial ownership transparency.

There has been significant progress in Europe. In 2015, EU countries finalized a measure requiring all Member States to create central registries of beneficial ownership information for companies established in their countries. As of June 2017, all 28 Member States are now required to make the information available to law enforcement, tax inspectors, lawyers, banks, accountants, as well as those with a "legitimate interest" in the information—such as civil society and journalists. The EU is currently in negotiations to strengthen its Anti-Money Laundering Directive to make this information public. There are a number of countries that have gone further than the directive. Two EU Member States have already set up registers of beneficial owners for companies and made them accessible to the public (UK and Denmark), and six other EU countries are in the process of creating public registries of beneficial ownership – having already changed their laws or in the process of doing so (Estonia, Finland, the Netherlands, Poland, Portugal, and Slovenia).

Outside of the EU, Ukraine has set up a similar public register of company beneficial owners and Afghanistan, Ghana, Nigeria and South Africa have committed to doing so. A further 20 countries engaged in the Extractive Industries Transparency Initiative (EITI) are in the process of setting up public registers of beneficial owners for companies in oil, gas and mining.[13]

Comments on the Discussion Draft Dated November 14, 2017

Increase transparency of corporate formation procedures (Section 9)

We are very encouraged that the committee is interested in moving beneficial ownership legislation, but we have several concerns with the language in the discussion draft to increase transparency of corporate formation procedures.

The discussion draft favors bank access to beneficial ownership information over law enforcement access by imposing greater limits on domestic and foreign law enforcement access to the information. Law enforcement is our first line of defense against criminal and terrorist activities, and law enforcement officers need to be able to acquire company ownership information quickly and easily without alerting the subjects of the investigation. Accessing the company ownership records at FinCEN, a federal agency, is critical to that mission.

Common terrorist and criminal scenarios might require law enforcement to obtain company ownership information in connection with suspect wire transfers, real estate transactions, aircraft used to transport illegal persons or substances, business transactions, and more.

[13] https://eiti.org/beneficial-ownership

The discussion draft enables banks to access beneficial ownership information from FinCEN by making a request, whereas federal and foreign law enforcement must produce formal subpoenas and state and local law enforcement can't access it at all. While we are supportive of banks and other stakeholders being able to easily access beneficial ownership information to safeguard the US financial system, it doesn't make sense to allow banks to access it by a simple request and then to make it difficult for law enforcement to do the same, especially given the purpose of the bill and the reason that FinCEN is listed as the sole collector of company beneficial ownership information.

1. Ensure that domestic law enforcement, including federal, state and local, has full access to FinCEN's database of beneficial ownership information.

Law enforcement, including federal, state and local, should have complete access to the database that FinCEN creates to collect beneficial ownership information. The discussion draft severely limits domestic law enforcement's access to beneficial ownership information by only allowing federal law enforcement to access the information through a criminal subpoena. This means state and local law enforcement cannot get access to beneficial ownership for their investigations and federal agencies that only use civil or administrative subpoenas won't be able to access it. At a minimum, the following federal agencies would not have access: Treasury, OCC, FDIC, FinCEN, SEC, OFAC, DOJ Civil Frauds division, DOJ Civil Tax, DEA, CFTC, FTC, FCC, FAA and the IRS.

In addition, no state agency under any circumstance would be given access to the information, even though the bulk of US criminal investigations are performed by state law enforcement agencies. States also do enormous work on civil fraud, securities violations, patent and copyright violations, business misconduct, tax dodging, other types of civil law enforcement where corporate ownership is critical to holding wrongdoers accountable.

Typically, if a law enforcement agency is working with a prosecutor's office, they obtain records through the service of a grand jury subpoena. If the investigation is in an early stage, however, and the agency has not yet brought a case to a prosecutor or teamed up with the prosecutor's office, the agency may seek the same evidence via an administrative subpoena. The most well-known examples include subpoenas issued pursuant to 18 U.S.C. § 3486 in cases involving health care fraud, the sexual exploitation of children, and threats against the President, and DEA subpoenas issued under 21 U.S.C. § 876 in cases involving the distribution of controlled substances. See Doe v. United States, 253 F.3d 256, 265-66 (6th Cir. 2001) (administrative subpoena issued under 18 U.S.C. § 3486 may request financial records relevant to a federal health care offense, including records that may lead to the forfeiture of the proceeds of the offense); United States v. Zadeh, 820 F.3d 746 (5th Cir. 2016) (affirming use of DEA subpoena under § 876 to obtain patient records from physician in investigation of the distribution of controlled substances via prescription). The DEA, for example, makes frequent use of administrative subpoenas in cases involving the illegal distribution of opioids and analogue drugs.

Administrative subpoenas are used in both criminal and civil investigations. They are distinguished from grand jury subpoenas in that they are issued by the law enforcement agency and not by the grand jury

via the prosecutor's office. Administrative subpoenas are invaluable in cases where it is not possible to use a grand jury subpoena. For example, because it is not proper to use a grand jury subpoena if there is no possibility of bringing criminal charges, administrative subpoenas may be used to obtain evidence in furtherance of a civil investigation when a related criminal case has already concluded.

Recommendation:

- Ensure domestic law enforcement, including federal, state and local, has full access to FinCEN's database of beneficial ownership information. This shouldn't require a subpoena.
- If the committee chooses not to do the above, than at a minimum, the language in the discussion draft needs to change from: "(i) a criminal subpoena from a Federal agency;" to: "(i) a civil, criminal or administrative subpoena or summons, or an equivalent of such a subpoena or summons, from a local, State, or Federal agency;"

2. Ensure that foreign law enforcement has access to beneficial ownership information so that it can be used in criminal and civil prosecutions.

It is quite common for foreigners to use US shell companies as part of a global organized crime network as they are easy to create, anonymous and give the appearance of legitimacy. However, the discussion draft severely limits foreign governments' access to beneficial ownership information through mutual legal assistance (MLA) requests, which leaves a giant loophole that will lead to the continued use of US anonymous vehicles in criminal enterprises originating abroad.

First, the discussion draft requires the MLA request to be in connection with a terrorism or criminal investigation. There is no reason to qualify the type of investigation by including "terrorism or criminal" before the word investigation. Cases involving civil misconduct, including securities violations, business misconduct, tax dodging, patent and copyright violations, cybersecurity violations, privacy violations, and more would not be able to get access to the information.

Second, the discussion draft limits law enforcement access even further in a way that severely limits its utility. By including "subject to the requirement that such country agrees to prevent the public disclosure of such beneficial ownership information..." it only enables foreign governments to access beneficial ownership information that serves an intelligence purpose and not a law enforcement purpose. To serve a law enforcement purpose it needs it be able to be introduced in court, which could mean it is discoverable at a later date. As written it appears to prevent this and therefore has little utility to a foreign prosecution.

***Recommendation*:**

- Ensure that foreign law enforcement has access to beneficial ownership so that it can be used in criminal and civil prosecutions. Specifically, change the discussion draft language from:

"(ii) a written request made by a Federal agency on behalf of a law enforcement agency of another country under an international treaty, agreement, or convention, or an order under section 3512 of title 18, United States Code, or section 1782 of title 28, United States Code, issued in response to a request for assistance in a terrorism or criminal investigation by such foreign country, subject to the requirement that such other country agrees to prevent the public disclosure of such beneficial ownership information or to use it for any purpose other than the specified terrorism or criminal investigation;"

To:
"(ii) a written request made by a Federal agency on behalf of another country under an international treaty, agreement, or convention, or an order under section 3512 of title 18, United States Code, or section 1782 of title 28, United States Code, issued in response to a request for assistance in an investigation by such foreign country;"

3. Require foreign nationals to file their beneficial ownership information with FinCEN, including submitting a scanned copy of the relevant pages of their non-expired passport to FinCEN and define the term "applicant."

The discussion draft appears to favor foreign owners over US applicants. It requires applicants that form entities to submit beneficial ownership information to FinCEN for each beneficial owner with a non-expired US passport or US drivers' license. If the beneficial owner doesn't have one, the applicant appears to have no obligation to give the beneficial ownership information to FinCEN unless FinCEN requests it. In other words, the bill treats foreigners better than US persons — giving them more secrecy upfront. Given existing AML risks, giving foreigners more secrecy than US persons would be unwise. Both foreign owners and US person owners should be required to file beneficial ownership information with FinCEN.

The original reason for this language being included in previous legislation was opposition from the states that had concerns about their ability to process passport information from foreign countries. Given that it has been almost a decade since this was first included in legislation and now only FinCEN is collecting the information, this language should be updated and a process created that enables scanned passport information for beneficial owners with foreign passports to be submitted to FinCEN directly. Applicants could also be required to take an extra step and verify all foreign beneficial owners' information submitted to FinCEN. FinCEN is our financial intelligence unit and it already has the capacity to set up a system that accepts foreign passport information and to be familiar with foreign passport credentials.

Furthermore, other beneficial ownership legislation, including H.R. 3089, would impose anti-money laundering obligations on formation agents since they are gatekeepers to the US financial system, and would likely be the key persons collecting beneficial ownership information for foreign-owned American corporations or LLCs. By dropping that section, the bill eliminates an important anti-money laundering safeguard mandated under international standards and creates an undeserved loophole for foreign-owned entities.

Additionally, "applicant" is not defined in this section or in any other part of the bill. One could assume it means the person filing an application with a state to form a corporation or LLC, but that is never spelled out. It should include formation agents and company service providers who file applications on behalf of their clients, but it is unclear. If the obligation does apply to formation agents and company service providers providing beneficial ownership information to FinCEN, it seems reasonable to require them also to file any scanned identifying information from a foreign passport with FinCEN.

Recommendations:

- Require foreign nationals to file their beneficial ownership information with FinCEN, including submitting a scanned copy of the relevant pages of their passport to FinCEN.
- Define the term "applicant" and if an applicant can be a company formation agent, you should include the section of H.R. 3089 that was deleted, which would have required AML obligations for individuals whose job it is to set up companies, which includes company formation agents.

4. Add an enforcement mechanism to the discussion draft.

The bill doesn't contain an enforcement mechanism to ensure "applicants" file beneficial ownership information with FinCEN. In addition, as currently drafted, there is no way to ensure that FinCEN knows a company was formed in a state and didn't file with FinCEN, or for FinCEN to know all of the existing companies that will need to file after this is passed into law. For example, there is no provision that says that an application to form a corporation or LLC is not valid until the state forming the entity receives written notice from FinCEN that the necessary beneficial ownership information has been filed. Earlier bills were thought to involve the IRS, which has its own enforcement division and ways to do this, but FinCEN doesn't have a way to ensure the bill is enforced. The bill requires new entities as well as existing entities to file this information so it needs a mechanism for enabling FinCEN to know about their existence so it can cross check filers with active entities to determine which entities did not file with FinCEN.

Recommendation:

- Add an enforcement mechanism to the bill. This could be done by barring a state from forming a new entity until it receives notice from FinCEN that FinCEN has received the necessary beneficial ownership information. It could also potentially be done by ensuring FinCEN has the authority to regulate in this area, perhaps by requiring states to provide current listings of all of their corporations and LLCs that are active.

5. Allow identification for beneficial owners to include non-expired state issued identification to meet the requirement if they do not have a non-expired US driver's license or US passport.

The discussion draft requires "(III) a unique identifying number from a non-expired passport issued by the United States or a non-expired driver's license issued by a State; and." This appears to be an oversight as it doesn't allow other state issued identification to be used for individuals without a license or passport.

***Recommendation*:**

- Amend the discussion draft to include "or identification card issued by a State" as follows: "(III) a unique identifying number from a non-expired passport issued by the United States or a non-expired driver's license issued by a State or identification card issued by a State; and..."

6. Banks should begin to implement the customer due diligence (CDD) regulation on time, in May 2018.

Prior to the publication of the CDD rule in May 2016, which is set to be implemented in May 2018, there has been a longstanding, clearly identified need for banks to explicitly collect beneficial ownership information for their customers in order to create a risk profile and assess risk. When the bank doesn't know with whom it is doing business, it is not possible to adequately assess risk. Prior to this rule, US banks, with few exceptions, were not required to identify the real people or beneficial owners behind the companies that open accounts. This massive hole in US regulations was noted in the Financial Action Task Force's (FATF) Third Mutual Evaluation Report on Anti-Money Laundering and Combating Financing of Terrorism: United States of America (2006), when it stated the US Customer Identification Program (CIP) rules "do not require a financial institution to look through a customer that is an entity to its beneficial owners,"[14] and again in the 4th Mutual Evaluation of the United States (Dec 2016) which again rated the US non-compliant and identified the lack of customer due diligence requirements to ascertain and verify the identity of beneficial owners, except in very limited cases, as a significant shortcoming.[15]

Once this discussion draft is introduced as legislation and passed into law, regardless of how long Congress gives FinCEN to set up this entirely new database of beneficial ownership information, it will take a significant amount of time to get it up and running and populated with the required beneficial ownership information. Adequate customer due diligence within banks, which is what the regulation requires, cannot stop in the interim because the banks need to know its customers does not stop. Banks have been working to put the necessary processes in place to collect this information for at least the last 18 months, so those that are not already doing so should start collecting it on schedule, in May 2018.

***Recommendation*:**

- Do not suspend the CDD regulations from going into force in May 2018.

[14] http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf p98.
[15] http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf p205

Reporting requirements

7. Do not raise the CTR and SAR reporting thresholds as it would make it easier for drug traffickers and terrorists to move cash without alerting authorities.

We support Treasury undertaking a formal review of current financial reporting requirements, however we do not support raising the CTR and SAR thresholds (Section 2 (a)(2), Section 2 (b) and Section 3 (b)(3)).

Raising the reporting thresholds would make it easier for drug traffickers and terrorists to move cash without alerting authorities. The $10,000 CTR threshold, in particular, has made it very difficult for drug traffickers to operate. This is why they use smurf operations and multiple deposits to avoid the thresholds, and it is this structuring that makes it more likely that they will get caught.

The committee should not raise the reporting threshold from $10,000 to $30,000. While I understand you are considering this to adjust for inflation and the reduced value of the dollar since the threshold was enacted in the 1970s, this doesn't take into account that with respect to individuals, depositing large amounts of cash has actually become more unusual. The way the world works has changed. Unlike in 1970, it is rare for a person conducting a legitimate business to need any significant amount of currency. With certain well-known exceptions, such as grocery stores, amusement parks, and other cash-intensive businesses that are already exempt from the currency-reporting laws, payments of significant sums of money are made electronically. Those carrying more than $10,000 in cash are, by and large, doing so expressly for the purpose of avoiding the creation of a paper trail – because their business is *not* legitimate, or because they intend to evade the payment of taxes. This is why there are a large number of structuring transactions reported by financial institutions on SARs. Raising the reporting limit to $30,000 would simply create a record-free zone for a much larger number of transactions, and lift the burden on wrongdoers who must deal in cash, while doing little or nothing to relieve any burden on legitimate commerce.

CTRs are often scrutinized to see if suspicious activity is taking place. Raising the CTR reporting threshold would likely lead to fewer SARs, even though as explained above, in today's world it is more unusual for individuals to be carrying, say, $25,000 in cash. Furthermore, CTR reporting is automated at the majority of banks, so there would be minimal savings by raising the CTR reporting thresholds.

***Recommendation*:**

- Do not raise the CTR and SAR reporting thresholds.

8. Treasury should not assess the utility of SARs and CTRs for law enforcement (Section 3 (b)(6)).

Treasury cannot accurately assess the categories, types and characteristics of SARs and CTRs that are of greatest value to, and best support, investigative priorities of law enforcement. First, Treasury is not

familiar with state and local law enforcement which handles the bulk of criminal investigations and prosecutions across the country. Nor is it familiar with the many federal law enforcement efforts that might make use of SAR or CTR data including such varied issues as health care fraud, opiates and illegal drugs, wildlife trafficking, securities and accounting fraud, patent and copyright infringement, immigration violations, food safety violations, antitrust violations, and much more. Second, the utility of SAR and CTR data may depend on what other information happens to be in the hands of law enforcement at any given time when they are investigating. This is situational and varies in ways that would make a Treasury analysis difficult or impossible without extensive and expensive surveys and data collection. Third, law enforcement priorities are different throughout the country and change over time. A Treasury review would only be a snap-shot of one point in time and would therefore be of extremely limited value.

***Recommendation*:**

- Treasury should not assess the utility of SARs and CTRs for law enforcement.

Treasury's role in coordinating AML/CFT policy and examinations across government

9. FinCEN should not be setting AML/CFT priorities for banks on an annual basis or otherwise.

We have concerns with Section 6 (a) and (b) of the discussion draft. FinCEN should not be setting AML/CFT priorities for banks on an annual basis or otherwise. Banks set their AML/CFT priorities based on their assessment of the unique risks their business model poses after factoring in their unique clientele, the jurisdictions in which they have correspondent relationships, the risks posed by their various business lines and how much of their business is in those riskier lines, etc. This can be informed by information provided by FinCEN in what it is seeing as far as trends in SARs and emerging threats, but FinCEN should not be setting a one-size fits all approach. Subsection (a) will completely eviscerate the idea that banks need to understand the risks their business activities pose and address them effectively. Subsection (b) says that once FinCEN sets those priorities, banks can only be examined for their compliance program in relation to those priorities, which would create a tick box approach to compliance and send the message that banks don't need to worry about anything that falls outside of FinCEN's AML/CFT priorities, regardless of the risk profile of the bank's activities.

Recommendation:

- FinCEN should not be setting AML/CFT priorities for banks on an annual basis or otherwise as banks need to understand and address the risks their business activities pose, and it would lead to a tick box approach to compliance.

Improve information sharing efforts among financial institutions

10. Permit banks to share SARs with any branch or affiliate, but only insofar as the prohibition on banks disclosing the existence of a SAR to clients is a legal requirement applicable to any branch or affiliate with whom SAR information is shared.

We are supportive of efforts to improve information sharing among financial institutions. However, the discussion draft should extend the prohibition on banks disclosing to clients about the existence of a SAR to any branch or affiliate with whom SAR information is shared.

Recommendation:

- Extend the prohibition on banks disclosing to clients about the existence of a SAR to any branch or affiliate with whom SAR information is shared.

Encourage the use of technical innovation

11. Use of new technology should be encouraged, but must be done responsibly. A section of Treasury should be created or tasked with reviewing, approving and monitoring the use of new technology by financial institutions. There should not be a safe harbor provision.

We are supportive of banks incorporating new technology into their compliance activities. However, we are not supportive of the sweeping nature of the safe harbor provision. The discussion draft could create a new section of Treasury, or task an existing section, with reviewing, approving and monitoring the use of new technology.

Recommendation:

- A section of Treasury could be created or tasked with reviewing, approving and monitoring the use of new technology. There should not be a safe harbor.

Additional opportunities to reform the current BSA regime and anti-money laundering requirements

While banks serve as the frontline of defense and must continue to play a primary role and bear significant responsibility against dirty money and terrorist finance entering the US financial system, they shouldn't be alone in bearing that responsibility. Those seeking to move suspect funds utilize the services of a wide range of professional gatekeepers to the financial system who handle large sums of money. Company service providers, the real estate sector, lawyers and accountants should also take responsibility for knowing with whom they are doing business and engage in efforts to prevent their services from being used to launder dirty money.

Requiring these sectors to have anti-money laundering compliance programs would finally bring the US in line with the international anti-money laundering standards that the US was instrumental in creating as a leading member of the Financial Action Task Force (FATF). In its 2016 assessment of the US, FATF

noted that the US regulatory framework "has some significant gaps, including minimal coverage of certain institutions and businesses (investment advisers (IAs), lawyers, accountants, real estate agents, trust and company service providers (other than trust companies)," and that, "the vulnerability of these minimally covered designated non-financial businesses and profession (DNFBP) sectors is significant, considering the many examples identified by the national risk assessment process."[16] Regulating these sectors would go a long way in preventing the US from being a safe haven for dirty finance from around the world.

12. Formation agents and others who are paid to set up corporations, trusts or other legal entities should have anti-money laundering obligations.

The US should comply with the international anti-money laundering standards that it has already agreed to implement. This means that US law should be aligned with the global standard about which professions should be subject to customer due diligence and record keeping requirements. Congress should ensure that anyone who is paid to form a legal entity with the imprimatur of the United States takes reasonable steps to know their customers, monitor their actions, and report suspicious activity to law enforcement.

Recommendation:

- Formation agents and others who are paid to form corporations, trusts, or other legal entities should be made subject to anti-money laundering obligations.

13. Lift the 2002 "temporary" exemption on persons who were required by a 2001 law to have an anti-money laundering program, including persons involved in real estate closings and settlements.

In 2001, the PATRIOT Act required covered financial institutions to establish anti-money laundering programs, but in 2002, the Treasury Department granted what it called a "temporary" exemption to several categories of persons, including persons involved in real estate closings and settlements. Sixteen years later, that temporary exemption is still in place. It is time to eliminate the exemption and set a deadline for those persons to come into compliance with the law. Treasury could also be directed to issue any necessary regulations.

Aside from the fact that the legal requirement has been on the books since 2001, the US should comply with the international anti-money laundering standards that it has already agreed to implement, which require some of the exempted categories of persons to have anti-money laundering programs.

In the case of real estate, it is all too easy for bad actors to use real estate purchases as a vehicle for money laundering. High-end real estate purchases are prone to money laundering risks, according to FATF and the US Treasury. That's why, since 1988, Congress has made "persons involved in real estate closings and settlements" subject to anti-money laundering obligations. FATF has also issued global

[16] http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf, p3.

guidance for countries on how to adopt measures that would ensure real estate professionals and others who are involved in real estate transactions are conducting anti-money laundering due diligence properly.

After the New York Times published its Towers of Secrecy series,[17] the Department of the Treasury issued a 6 month geographic targeting order for all cash, high end residential real estate purchases in a handful of locations, and has renewed and expanded it several times. Further illustrating the importance of regulating in this area, Treasury recently found that approximately 30 percent of high end, all cash real estate purchases in six major metropolitan areas involved a "beneficial owner or purchaser representative that is also the subject of a previous suspicious activity report."[18] While a welcome step, the current GTOs are a poor substitute for the 15-year-old requirement that persons involved with real estate closings and settlements must establish an anti-money laundering program.

Recommendation:

- Congress should lift the "temporary" exemption created in 2002 excusing certain categories of persons from complying with the 2001 law requiring them to establish anti-money laundering programs, including "persons involved in real estate closings and settlements." A deadline should be established to bring everyone into compliance with the law, which is now 16 years old. As a part of this effort, the Treasury Department should also require public disclosure of the beneficial owners who ultimately own companies purchasing real estate throughout the US.

14. Require transactional lawyers to have customer due diligence and record keeping requirements.

The US should ensure that it complies with the international anti-money laundering standards that it has already agreed to implement. This means that the US should pass legislation requiring transactional lawyers, and anyone else who creates companies, to carry out anti-money laundering checks. The American Bar Association (ABA) should also update its Model Rules of Professional Conduct to require lawyers to carry out anti-money laundering checks along the lines of the voluntary guidance provided by the ABA in 2010 on the subject.

Laundering money is, of course, illegal in the US for anyone, including lawyers. In addition, the ABA's Model Rules of Professional Conduct prohibit lawyers from counseling a client to engage in conduct that the lawyer knows is illegal,[19] and in order to carry out that requirement lawyers need to do some due diligence. However, American lawyers appear to take a "head in the sand" approach where they try not

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[17] *The New York Times* series "Towers of Secrecy" available at https://www.nytimes.com/news-event/shell-company-towers-of-secrecy-real-estate

[18] https://www.fincen.gov/news/news-releases/fincen-targets-shell-companies-purchasing-luxury-properties-seven-major

[19] American Bar Association, Rule 1.2: Scope of representation & allocation of authority between client & lawyer (d), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer.html

to ask too many questions so they cannot be deemed to have knowledge. This is the same approach that the banks took for years before it was understood that they played a vital role as gatekeepers to the financial system, which is a very similar role that transactional lawyers play.

These risks have been highlighted by the Financial Action Task Force. Its 2016 assessment of the US found that lawyers were not applying basic or enhanced due diligence processes, describing this as a "serious gap."[20] It went on to note that it also was not clear whether lawyers were complying with the ABA's voluntary guidelines, as they are not enforceable, and recommended that anti-money laundering rules be imposed on lawyers "as a matter of priority."[21,22]

The following are a few examples that illustrate how attorney-client accounts are open to abuse.

Court documents in the recent Department of Justice indictment in the 1MDB scandal allege that $1 billion was laundered in the US, and much of that $1 billion was also spent in the US.[23] According to the court documents, approximately one-third of it ($368 million) moved through the client account of a single Manhattan law firm, Shearman & Sterling LLP.[24] Money from this account was then used to buy luxury real estate, a Beverley Hills hotel and a private jet, and to fund the Wolf of Wall Street motion picture.[25] It is important to note that there are no allegations of wrong-doing against Shearman & Sterling and the firm has stated that it "had no reason to believe that any funds transferred to Shearman & Sterling were the proceeds of unlawful activity."[26]

This wasn't the first time that US attorney-client accounts have been used to shift corrupt funds into the US. Teodorin Obiang, son of the President of Equatorial Guinea, shifted millions of dollars of suspect funds into the US. Two lawyers helped Obiang circumvent US anti-money laundering controls by allowing him to use attorney-client, law office, and shell company accounts as conduits for his funds and without alerting the bank to his use of those accounts.[27]

These examples are particularly interesting to Global Witness as it highlights a major weakness in the US' anti-money laundering controls. For our recent report, Lowering the Bar,[28] which was covered on 60 Minutes, a Global Witness investigator, posing as an adviser to a foreign government official, asked thirteen New York law firms (not including Shearman and Sterling) how to anonymously move large sums of money that should have raised suspicions of corruption. In all but one case, the lawyers

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[20] http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf p10, 120
[21] http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf p123
[22] http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf p118
[23] https://www.justice.gov/opa/pr/united-states-seeks-recover-more-1-billion-obtained-corruption-involving-malaysian-sovereign
[24] http://www.wsj.com/articles/law-firm-account-held-1mdb-funds-1469141647
[25] https://www.justice.gov/opa/file/877166/download paragraph 106.
[26] http://westlakelegal.com/law-firms-use-of-trust-accounts-under-scrutiny/
[27] https://www.hsgac.senate.gov/download/report-psi-staff-report-keeping-foreign-corruption-out-of-the-united-states-four-case-histories
[28] https://www.globalwitness.org/en/reports/loweringthebar/

provided suggestions on how to get the money into the US without detection, which included the use of anonymously-owned companies and trusts. At least two suggested using the lawyers' escrow account. The meetings were all preliminary; none of the law firms took the investigator on as a client. Nor did they break the law.

In one interview, a lawyer described a method that could enable the minister to reduce the chances of a US bank performing anti-money laundering checks when wiring money into the country. They suggested that the minster could use their law firm's pooled client, or escrow, account to bring the money into the US.

> Investigator: And you don't have to declare to bank authorities where the money comes from, because you said you even don't know who they are?
>
> Lawyer: Well, they've asked me twice at [name of bank redacted], I use [name of bank redacted]. They've asked me 'so you have a lot of money coming in'. I said yes, it's real estate deals. 'Oh thank you very much' [said the bank].
>
> Investigator: No other question asked? Even if it's foreign money?
>
> Lawyer: The money came in; they can tell it's from an offshore bank. I said: 'I did a real estate deal'. The money came in day one, it went out on day five, that's the way it works.
>
> Investigator: And the only question asked was?
>
> Lawyer: What's it there for? I did a deal. That's it[29]

These examples demonstrate how attorney-client escrow accounts can be used to bypass checks at financial institutions and move suspect money into the US.

Recommendation:

- Congress should require transactional lawyers to have customer due diligence and record keeping requirements. The law must specify what due diligence transactional lawyers have to carry out before accepting a client, require transactional lawyers to identify higher risk clients and require them to report suspicious transactions to the authorities.

Conclusion

It is great to see momentum building in the new Terrorism and Illicit Finance Subcommittee and in the Financial Institutions and Consumer Credit Subcommittee to introduce a bill to help keep terrorist finance and other forms of dirty money out of the US.

[29] https://www.globalwitness.org/en/reports/loweringthebar/, p. 8

There have been many voices calling on Congress to take action on these issues and increase beneficial ownership transparency. Approximately forty-five NGOs and ten national law enforcement associations, as well as appointed and elected law enforcement leaders at the state and federal level, have expressed support for legislation aimed at tackling anonymous companies. The Clearing House Association, the Independent Community Bankers of America (ICBA), the Credit Union National Association (CUNA) and the National Association of Federally-Insured Credit Unions (NAFCU) have all expressed support for legislation to end anonymous companies in the US. Scholars from think tanks across the political spectrum, including Hudson's Kleptocracy Initiative; Brookings Institution; American Enterprise Institute; Council on Foreign Relations; the Terrorism, Transnational Crime and Corruption Center (TraCCC) at George Mason University; Foundation for Defense of Democracies and the Carnegie Endowment for International Peace have also called for beneficial ownership disclosure. CEOs from multiple companies, including Allianz, Virgin Group, Salesforce, Dow Chemical Group, Kering Group and Unilever have all endorsed legislation that would increase beneficial ownership transparency, as have investors representing more than $855 billion in assets.

Requiring the disclosure of the real owners of American companies will stop criminals using companies to cover their tracks. This is a problem Congress can stop and we look forward to working with you and your colleagues on legislation to strengthen the US anti-money laundering framework so that we can stop the US from being a safe haven for illicit money and terrorist financing from around the world.

Thank you for inviting me to testify today and share my views on this important issue.

FINANCIAL INTEGRITY
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Testimony before the

House Financial Services Subcommittee on Terrorism and Illicit Finance

House Financial Services Subcommittee on Financial Institutions and Consumer Credit

"A Legislative Proposal to Counter Terrorism and Illicit Finance"

November 29, 2017

Chip Poncy
Financial Integrity Network

November 29, 2017

Chairmen Pearce and Luetkemeyer, Ranking Members Perlmutter and Clay, and distinguished members of the House Financial Services Subcommittees on Terrorism and Illicit Finance and Financial Institutions and Consumer Credit, I am honored by your invitation to testify before you today.

We are confronting a pivotal moment in our 48 years of combatting illicit finance under the Bank Secrecy Act ("BSA"). As our counter-illicit financing efforts have expanded and become ever more important, they are also increasingly challenged – provoking fundamental questions of effectiveness, cost, roles and responsibilities, and, ultimately, sustainability. The combination of these developments necessitates fundamental reform of the BSA and the expanded anti-money laundering / countering the financing of terrorism ("AML/CFT") regime it supports.

This hearing marks an important and welcome opportunity to discuss how best to pursue such fundamental reform in modernizing the BSA and the U.S. AML/CFT regime. I am grateful for your leadership in addressing these issues, including through the proposed Counter Terrorism and Illicit Finance Act and the proposed End Banking for Human Traffickers Act of 2017 under consideration by your Subcommittees.

Our BSA and broader AML/CFT reform efforts require both immediate action and enduring attention by Congress. These efforts must consider:

I. The need for a strategic approach to address mounting frustrations of all AML/CFT stakeholders;

II. The modern evolution of our AML/CFT regime to understand the expanded interests, heightened complexity, unprecedented importance, and global reach that it now encompasses; and

III. Legislative action amending the BSA to establish a comprehensive framework for guiding and managing our expanded AML/CFT regime in an effective, efficient, and enduring manner.

My testimony below follows this roadmap and concludes by offering detailed recommendations for Congress to expand, amend, and strengthen the proposed Counter Terrorism and Illicit Finance Act.

My recommendations are broadly guided by the following three fundamental principles of AML/CFT reform:

(i) Promote more complete, effective, and efficient financial transparency, including by facilitating systemic reporting and sharing of information at a lower cost to financial institutions;

(ii) Exploit such financial transparency and information more effectively and consistently by investing in targeted financial investigative and analytic capabilities; and

(iii) Create an inclusive and clear management structure that empowers Treasury to govern the ongoing development and application of our expanded AML/CFT regime.

In accordance with these three fundamental principles of AML/CFT reform, my recommendations – detailed in Section III of my testimony below – are summarized as follows:

1. Incorporate into the proposed Counter Terrorism and Illicit Finance Act a new section expanding the objectives of the BSA to explicitly include protecting the integrity of the international financial system and our national and collective security.

2. Incorporate into the proposed Counter Terrorism and Illicit Finance Act a new section to: (i) restructure and enhance financial investigative expertise at Treasury; and (ii) provide protected resources to law enforcement, the intelligence community, and counter-illicit financing targeting authorities to pursue illicit financing activity and networks.

3. Strengthen Section 3 of the proposed Counter Terrorism and Illicit Finance Act to direct a more aggressive approach for Treasury to enhance financial transparency in a methodical, systematic, and strategic manner that: (i) addresses longstanding and substantial vulnerabilities in our financial system; and (ii) pursues reporting obligations based on straight-through processing that leverages new technologies, provides more bulk data for counter-illicit financing authorities, and ultimately reduces burdens on financial institutions.

4. Expand, strengthen, and clarify the relationship between Sections 4 and 7 of the proposed Counter Terrorism and Illicit Finance Act to encourage the broadest innovation and application of technologies to combat illicit financing – including through expanded information-sharing between and among financial institutions and governmental authorities under Section 314 of the USA PATRIOT Act.

5. Strengthen and expand Section 6 of the proposed Counter Terrorism and Illicit Finance Act by directing Treasury to strengthen, expand, institutionalize, and lead consultations with financial sectors and other industries covered by AML/CFT regulation in establishing and implementing priorities for U.S. AML/CFT policy.

6. Amend sub-Section 9(a)(3) and sub-Section 9(a)(1) of the proposed Counter Terrorism and Illicit Finance Act to support implementation of Treasury's CDD rule.

7. Otherwise consider Section 9 of the proposed Counter Terrorism and Illicit Finance Act and swiftly enact company formation reform to require the systemic reporting and maintenance of beneficial ownership information pursuant to an effective and workable framework.

As discussed in detail below, these recommendations are informed by the need for a strategic approach to address the current challenges and frustrations confronting our AML/CFT regime. They are also based on the modern evolution of the AML/CFT regime, including with respect to its expanded scope and objectives, heightened complexity and importance, and global reach. Understanding this evolution is critical in providing the clarity of purpose and importance that must guide the strategic reform of our AML/CFT regime. Understanding this evolution is also essential to achieving the stakeholder cooperation and public support necessary to accept the responsibilities, share the costs, and deliver the resources required to modernize our AML/CFT regime in a manner that is both effective and sustainable. Finally, understanding this evolution – coupled with a clear appreciation of the challenges and frustrations confronting our current AML/CFT regime – informs the three key principles outlined above that should drive our reform efforts.

In offering this testimony, I am grateful for the incredible dedication of my partners, colleagues, and friends at the Financial Integrity Network, the Center on Sanctions and Illicit Finance, the Treasury and across the U.S. Government, and in the global AML/CFT community – including the other expert witnesses who are testifying before you today. The primary basis of my testimony is the experience that I have gained in working with these experts and stakeholders all over the world to help shape and implement AML/CFT policy over the past fifteen years in the U.S. Government, the international community, and in the private sector.

I. Challenges and Frustrations Confronting Our Current AML/CFT Regime and the Need for a Strategic Approach to Reform

The BSA is the foundation of our AML/CFT regime. Over the past five decades, our AML/CFT regime has evolved in complex and fundamentally important ways. Beyond enabling traditional money laundering investigations against drug trafficking and fraud, our AML/CFT regime has become essential to combating the full range of serious criminal activity. Law enforcement now relies upon information generated by our AML/CFT regime to support the full range of counter-illicit financing efforts – from terrorist financing and WMD proliferation, to corruption and tax evasion. Even more broadly, this expanded AML/CFT regime has become essential to protecting the integrity of the financial system, the global economy it supports, and our national and collective security – including by providing the financial transparency required for effective sanctions implementation. These vital interests have driven the necessary expansion of our AML/CFT regime at home and have shaped our leadership abroad in developing and implementing a global AML/CFT framework in partnership with other financial centers and allies.

Yet, our expanded AML/CFT regime is increasingly challenged by the heightened complexity and globalization of the financial system and the world economy. It is also increasingly challenged by the heightened complexity, globalization, and rise of criminal and national security threats that prey upon and hide within our financial system and underlying economy.

The combination of these developments -- underscoring the unprecedented importance of our expanded AML/CFT regime and the unprecedented challenges it faces – has led to mounting frustration from all AML/CFT stakeholders:

- Law enforcement is increasingly overwhelmed by the complexity and volume of money laundering activity that fuels an expanding range of serious organized crime – from trafficking in human beings, drugs, and weapons, to fraud and grand scale corruption. The growth of such organized crime now threatens our national security, requiring the application of sanctions and other national security authorities and resources.

- Sanctions and other national security authorities and resources are increasingly stretched to disrupt evolving and emerging threats – from terrorism, WMD proliferation, and malicious cyber activity, to serious human rights abuses and rogue regimes that destabilize regions around the world and threaten our collective security.

- Regulators increasingly struggle to understand how best to prioritize, balance, and translate efforts to counter these threats in governing and enforcing effective implementation of an ever-expanding compliance regime within and across a highly diversified and complex financial system.

- Banks and other financial institutions are increasingly burdened by the costs of such expanding compliance obligations, the threat of enforcement actions for noncompliance, and the rise of competitive service providers that may not share their compliance obligations. More fundamentally, such financial institutions are increasingly challenged in managing unclear or competing expectations associated with protecting the integrity of our financial system from illicit financing risks they often cannot assess.

- Businesses and various segments of the general public are ultimately frustrated by the demands of a financial system whose compliance regimes appear increasingly invasive, costly, or outright prohibitive to legitimate economic interests. Policies of financial exclusion by financial institutions recalibrating their risk tolerances may drive legitimate and urgent demand for financial services underground – particularly with respect to vulnerable sectors and communities that present high risk and low profitability to banks.

Addressing any one of these stakeholder frustrations in isolation threatens to compound frustration from other stakeholders. Relief for financial institutions may heighten challenges for law enforcement and national security authorities. Additional demands for financial information and financial action by such authorities may lead to even greater costs and regulatory burden for financial institutions and their customers. Solving these challenges requires a comprehensive and strategic approach.

Such a comprehensive and strategic approach must begin with clarity of purpose. It must embrace innovative thinking and the application of new technologies to discover and drive efficiencies in

advancing the vital interests of our expanded AML/CFT regime. It demands leadership and integrated efforts from across the financial services industry and the regulatory, law enforcement, national security, and policymaking communities. It requires an inclusive but clear management framework. It requires the understanding and support of the general public. And it must be grounded in a firm appreciation of the expansion, complexity, importance, and global reach of our AML/CFT regime, as reflected by its modern evolution.

II. The Modern Evolution of Our AML/CFT Regime

Since the initial adoption of the BSA almost 50 years ago, and particularly over the past generation since the terrorist attacks of 9/11, our AML/CFT regime has evolved dramatically in the following interrelated ways:

(i) Expansion of scope, stakeholder interest, and objectives;

(ii) Heightened complexity and importance; and

(iii) Globalization of the AML/CFT regime and the broader financial integrity and security mission.

Understanding this evolution, described in greater detail below, is critical to guiding our BSA and broader AML/CFT reform efforts.

(i) Expanding substantive scope, stakeholder interest, and objectives of the AML/CFT regime

As described in greater detail below, the significant expansion of our AML/CFT regime in scope, stakeholder interest, and objectives is reflected by:

a. The expansion of predicate offenses to money laundering;

b. The increasing reliance of sanctions compliance and broader risk management on effective implementation of our AML/CFT regime; and

c. The essential role of our AML/CFT regime in protecting the integrity of the financial system and our national security.

a. *Expansion of AML predicate offenses*. Our AML/CFT regime, launched with the introduction of the BSA, initially focused on reporting bulk cash movements to assist in tax compliance, the criminalization of drug money laundering, and the detection and confiscation of drug trafficking proceeds. Through the expansion of predicate offenses, our AML/CFT regime now encompasses practically all serious criminal activity – including various forms of fraud, corruption, terrorist financing, and WMD proliferation achieved through the violation of export controls or smuggling.

This expanded scope has significant consequences for traditional AML risk management across our financial system, as these different types of predicates expose additional financial products, services, relationships, institutions, markets, and sectors to different kinds and degrees of illicit financing risk. It also expands the range of law enforcement agencies that rely upon financial information to pursue various criminal networks that launder their proceeds through our financial system.

b. *Increasing reliance of sanctions compliance and broader risk management on effective implementation of our AML/CFT regime.* The scope of our AML/CFT regime has also expanded as sanctions compliance has increasingly relied upon and blended with AML/CFT risk management. It is often impossible to know whether any given financial account or transaction may involve a sanctioned party, activity, or jurisdiction without performing robust due diligence driven by AML regulatory requirements.

As sanctions programs have become more complex, their effective implementation relies upon more sophisticated development, integration, and application of underlying AML programs to assess and manage sanctions risk. Consequently, sanctions policy, targeting, compliance, and enforcement authorities – as well as sanctions compliance programs and officers in financial institutions – have become increasingly reliant upon and integrated into the AML/CFT regime and AML compliance programs.

This reliance presents challenges and opportunities for integrating the governance, implementation, and enforcement of our AML/CFT regime and sanctions compliance.

c. *Expanding objectives of our AML/CFT regime.* The objectives of our AML/CFT regime have also evolved, consistent with the expansion of the regime's scope and stakeholder interests. Following the terrorist attacks of 9/11, Congress expanded the purpose of the BSA "to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." While this expansive criminal justice, tax compliance, regulatory, intelligence, and counter-terrorism set of objectives is more important than ever, it is also incomplete.

Protecting the integrity of the financial system has also become an essential objective in its own right. In addition to law enforcement and other investigative and intelligence authorities, financial institutions – together with the customers, markets, and global economy they service – are direct beneficiaries of AML/CFT regimes. Financial institutions are end users of BSA recordkeeping and reporting, relying on such information to identify and manage all manner of illicit financing risk for purposes of protecting the integrity of the financial system. Such integrity is fundamental for the financial system to maintain not only the security of the customer assets it holds, but also the confidence of markets and the general public.

This reality is evident in the way we talk about actions taken under various AML/CFT authorities – both under our own AML/CFT regime, and in concert with AML/CFT authorities abroad. Such actions are intended in large part to protect the integrity of the financial system.

Recognizing this expansive objective underscores the primary role of financial institutions in both implementing and informing our AML/CFT regime. It also underscores the importance of establishing robust public-private partnerships, including at policy and operational levels, to effectively implement and inform our AML/CFT regime.

Perhaps most importantly, our AML/CFT regime has evolved more broadly into a financial security regime, essential to protecting our national security. The financial transparency and accountability created through our AML/CFT regime enable effective development and implementation of sanctions policies and other targeted financial measures to combat a growing array of threats to our national security. Such transparency and accountability also generates financial information that our intelligence and national security community increasingly relies upon to identify and disrupt these threats.

These concepts associated with the expanding scope, stakeholder interest, and objectives of our AML/CFT regime must also inform our AML/CFT reform efforts.

(ii) Heightened complexity and importance of the AML/CFT regime

As AML/CFT regimes have expanded across scope, stakeholder interest, and objectives, they also have become more complex and important. This is true for public sector authorities, the private sector, and the general public.

a. *Heightened complexity of our AML/CFT regime*. The heightened complexity of our AML/CFT regime has inevitably followed the globalization and increased sophistication and intermediation of the financial system. This includes within and across financial products and services; banks, non-bank financial institutions, and designated non-bank financial businesses and professions; and countries, sub-national jurisdictions, and supra-national jurisdictions.

In combating various forms of illicit finance, AML/CFT authorities and financial institutions are increasingly challenged to understand and keep pace with these evolving complexities of the modern financial system. Such an understanding is required as a baseline for identifying and combating illicit financing threats that exploit the vulnerabilities that such a complex financial system presents.

The heightened complexity of our AML/CFT regime has also been driven by the globalization of criminal and illicit financing networks and the blending of illicit financing risk – including across money laundering, terrorist financing, sanctions evasion, bribery and corruption, proliferation finance, tax evasion, and state and non-state actors. Such heightened complexity of criminal activity challenges AML/CFT and national security authorities – as well as compliance regimes in financial institutions – to enhance specialization of counter-illicit

financing expertise while simultaneously integrating counter-illicit financing strategies, policies, and risk management programs.

Addressing such heightened complexity requires heightened and integrated expertise across the core stakeholders of our AML/CFT regime. Such expertise, in turn, demands heightened and integrated training about how the financial system works, and how illicit actors abuse it. These considerations must also inform the reform of our AML/CFT regime.

b. *Heightened importance of our AML/CFT regime.* As our AML/CFT regime has expanded and become more complex, it also has become more important – for law enforcement, national security, and the integrity of the financial system itself.

The heightened complexity and globalization of criminal and illicit financing networks has made financial information more important than ever before to law enforcement agencies pursuing serious criminal activity. Federal law enforcement agencies have repeatedly testified that the BSA database is among the most important sources of information they have in combating various forms of serious and organized crime, from drug trafficking and fraud to tax evasion and terrorist financing.

In addition, the post-9/11 development and integration of CFT strategies and policies into the AML regime and the rise of transnational organized crime have attached clear national security importance to our AML/CFT regime. As sanctions and other national security authorities have become more reliant upon financial information and disruption in the post-9/11 era, the AML/CFT regime has become a crucial foundation for applying financial and economic pressure as an instrument of national and collective security. This is evident in the financial and economic pressure, isolation, and disruption campaigns the U.S. has led against al Qaeda, Iran, ISIS, North Korea, and rogue financial institutions such as Banco Delta Asia or Liberty Reserve. It is now difficult to think of any response to a national security threat that does not involve a significant financial element reliant on implementation of AML/CFT regimes.

The pervasive rise of transnational organized crime has also emerged as a clear threat to our national security. This is most evident in our 2011 National Security Strategy to Combat Transnational Organized Crime, including Executive Order 13581. Quite simply, we now need national security authorities to complement traditional law enforcement authorities to combat this threat. Given the expansion of AML predicates across the full spectrum of transnational organized criminal activity, our AML/CFT regime has clearly become an integral part of protecting our national security, including through the use of national security authorities to attack criminal activities traditionally targeted by AML/CFT regimes.

Finally, as discussed above, our AML/CFT regime is crucial to protecting the integrity of the financial system itself. This importance is underscored by the rise of cybercrime, identity theft, and other forms of fraud that increasingly and systematically target our financial institutions and our financial system as a whole.

Recognizing this heightened complexity and importance of our AML/CFT regime in combating the full range of serious criminal activity, protecting our national security, and safeguarding the integrity of our financial system is essential in guiding reform of the BSA and our AML/CFT regime more broadly. We must be clear-eyed about the resources required to advance and protect such complex and important interests. We must also be attentive to the fair distribution of costs and responsibilities across the beneficiaries of our AML/CFT regime – including AML/CFT and national security authorities, financial institutions and other vulnerable industries, the customers they service, and the general public. And we must focus on directing our AML/CFT policies and resources in a manner that drives efficiency and effectiveness.

(iii) Globalization of AML/CFT regimes and the broader financial integrity and security mission

For almost three decades, the United States has led the globalization of AML/CFT regimes in regions and jurisdictions around the world, including with its partners in the G7, the G20, the Financial Action Task Force ("FATF"), eight FATF-Style Regional Bodies ("FSRBs"), the World Bank, the IMF, and the United Nations. This sustained effort and commitment has been grounded in the recognition of the growing transnational and ultimately global threat presented by an expanding range of illicit financing activity. This effort has also created a truly global framework essential for combatting serious criminal activity, protecting our national and collective security, and safeguarding the integrity of the international financial system.

After 9/11, the global CFT campaign led by the United States became an instrumental factor in accelerating a global understanding of the importance of AML/CFT regimes to our collective security. Combating financial crime, protecting the integrity of the financial system, and promoting effective implementation of sanctions against threats to our national and collective security have since become central to Treasury's mission and to that of finance ministries around the world. Together with partner jurisdictions and organizations around the world, the United States has led a global commitment to expanding AML/CFT regimes and strengthening their implementation to advance these objectives.

This commitment is evident in the rapid evolution of the global counter-illicit financing framework. This framework continues to drive development and implementation of comprehensive jurisdictional AML/CFT, counter-proliferation, and financial sanctions regimes. This framework, largely led by the work of the FATF, manages jurisdictional participation in conducting the following sets of activities:

- Developing typologies of illicit financing trends and methods;
- Deliberating counter-illicit financing policies and issuing global counter-illicit financing standards;

- Conducting and publishing regular peer review assessments of jurisdictional compliance with the FATF's global standards; and
- Managing follow-up processes that both assist jurisdictions and hold them accountable in implementing the FATF standards.

Through the FATF network of assessor bodies, the overwhelming majority of countries around the world are incorporated into this counter-illicit financing framework.

The global standards issued by the FATF and assessed through this global framework cover a broad range of specific measures to protect the integrity of the financial system from the full spectrum of illicit finance – including money laundering, terrorist financing, proliferation finance, serious tax crimes, and corruption. These global standards create a conceptual and technical roadmap for countries and financial institutions to develop the capabilities required to advance and secure the integrity of the global financial system. The FATF standards generally encompass the following areas:

- Jurisdictional and financial institution processes and policies to assess and address illicit financing risks;
- Preventive measures covering the entirety of the financial system;
- Transparency and beneficial ownership of legal entities, trusts and similar arrangements;
- Regulation and supervision;
- Targeted financial sanctions;
- Criminalization of money laundering and terrorist financing;
- Confiscation of criminal proceeds;
- Financial analysis and investigation; and
- International cooperation.

Implementing the FATF global standards within and across these different areas of importance requires a whole-of-government approach in collaboration with the private sector, particularly financial institutions. It is a massive undertaking.

And it is essential to combat transnational organized crime, safeguard the integrity of the financial system, and protect our national and collective security.

Peer review assessments over the past several years demonstrate that most countries have taken substantial steps towards implementing many if not most of the requirements covered by the FATF

global standards. Collectively, this work represents a tremendous accomplishment in creating a firm global foundation for financial integrity and security, based on effective development and implementation of comprehensive AML/CFT regimes.

Nonetheless, these comprehensive jurisdictional assessments also reveal a number of deep-seated, systemic challenges to AML/CFT regimes. These challenges are also evident from many of the U.S. enforcement actions taken against global financial institutions in recent years, as well as from consistent criminal typologies of illicit finance.

The United States has one of the most effective AML/CFT regimes in the world. Yet many of the global and systemic challenges to AML/CFT regimes abroad also confront our own AML/CFT regime. Our capability and willingness to address these challenges at home will substantially impact our credibility and capability in driving other countries to do the same – and in holding accountable those countries that fail to meet such standards. Our BSA and broader AML/CFT reform efforts must consider these important ramifications.

III. Recommendations for Reforming the BSA and our AML/CFT Regime

My recommendations presented below for reforming the BSA and our AML/CFT regime focus on expanding, amending, and strengthening the draft Counter Terrorism and Illicit Finance Act. These recommendations are driven by the need for both immediate action and strategic reform to address the growing frustrations of our AML/CFT stakeholder community and secure the effectiveness and sustainability of our AML/CFT regime moving forward. These recommendations are also grounded in a clear understanding of the modern evolution of our AML/CFT regime, including its expanded scope and objectives, its heightened complexity and importance, and its global reach.

The draft Counter Terrorism and Illicit Finance Act proposes bold and necessary changes to the BSA and our AML/CFT regime. Several of these changes are consistent with recommendations that I presented before the House Financial Services Committee Task Force to Investigate Terrorist Financing in June of 2015. These changes address many of the urgent challenges we face in modernizing our AML/CFT regime. They also reflect the Congressional leadership required to reform, strengthen, and secure our AML/CFT regime to combat illicit financing, safeguard the integrity of our financial system, and protect our national security in an effective, efficient, and sustainable manner.

However, Congress should take additional steps to further promote the efficiency and strengthen the effectiveness of our AML/CFT regime. Such steps should leverage new technologies and more aggressively advance the following three principles of AML/CFT reform:

(i) Promote more complete, effective, and efficient financial transparency, including by facilitating systemic reporting and sharing of information at a lower cost to financial institutions;

(ii) Exploit such financial transparency and information more effectively and consistently by investing in targeted financial investigative and analytic capabilities; and

(iii) Create an inclusive and clear management structure that empowers Treasury to govern the ongoing development and application of our expanded AML/CFT regime.

By aggressively advancing these principles, Congressional action can establish a clear framework for economizing compliance by financial institutions while validating their efforts with dedicated resources to attack money laundering networks and combat threats to our national security.

Finally, some aspects of the proposed legislation are problematic – particularly with respect to its misconstruction of Treasury's customer due diligence rule ("CDD rule") and the complementary but independent relationship between the CDD rule and company formation reform. Such misconstruction jeopardizes both the effectiveness and workability of the CDD rule, and places significant and unnecessary burden on financial institutions and FinCEN.

My specific recommendations for amending and strengthening the proposed Counter Terrorism and Illicit Finance Act elaborate on these general thoughts and are broadly consistent with those I presented in 2015.

1. ***Incorporate into the proposed Counter Terrorism and Illicit Finance Act a new section expanding the objectives of the BSA to explicitly include protecting the integrity of the international financial system and our national and collective security.***

   As explained above, the scope and objectives of the BSA have continued to expand in important ways. This expansion now clearly encompasses safeguarding the integrity of the international financial system and protecting our national and collective security more broadly – including beyond the ongoing threat of terrorism. Recognizing these truths will enable a more accurate assessment of the benefits of our AML/CFT regime. It will also underscore the importance of the considerable investments that have been made and will be required to ensure our AML/CFT regime's effectiveness in meeting these fundamental interests, in addition to the objectives currently reflected in the BSA.

2. ***Incorporate into the proposed Counter Terrorism and Illicit Finance Act a new section to: (i) restructure and strengthen financial investigative expertise at Treasury; and (ii) provide protected resources to law enforcement, the intelligence community, and counter-illicit financing targeting authorities to pursue illicit financing activity and networks.***

   Despite the expanded coverage and heightened importance of our AML/CFT regime, U.S. law enforcement and other authorities responsible for pursuing illicit financing are severely

stretched. These authorities are the best in the world at what they do, but they are not keeping up with the pace of illicit financing itself. Various estimates of money laundering, testimony from law enforcement, and the official recognition of organized crime as a national security threat all demonstrate that we are losing this battle in the criminal justice domain. And we are not investing enough in law enforcement to try to reverse this.

Our law enforcement community also is not structured in a way that develops and focuses financial investigative expertise to systemically and relentlessly pursue all manner illicit financing as a consistent priority. A fully dedicated law enforcement office – armed with our most advanced financial investigators and the authority to pursue all forms of illicit financing – is required to give teeth to our criminalization of money laundering, terrorist financing, tax evasion, and related financial crimes. The blended complexity of these and other illicit financing threats we face – and of the international financial system they prey upon – require such a focused structure.

Our most advanced financial investigators sit within the Criminal Investigative Division ("CID") of the Internal Revenue Service ("IRS") at Treasury. These investigators are uniquely trained to lead and provide critical support to the most pressing, complex, and sensitive financial investigations in our law enforcement community. All too often, however, their leadership and participation in such investigations is constrained by their dominant focus on criminal tax enforcement. Congress should discuss with Treasury how best to restructure and resource CID in a manner that enables and empowers our best financial investigators to consistently focus on all manner of sophisticated illicit finance. Such a restructuring could involve moving CID from the IRS to the Office of Terrorism and Financial Intelligence, in whole or in part.

Separate and apart from law enforcement, sanctions authorities and intelligence analysts are also straining to keep up with the expanding and increasingly complex dashboard of national security threats they face. In the last four months alone, Congress has passed the most sweeping sanctions legislation in history targeting Iran, North Korea, and Russia. At the same time, the Administration has imposed unprecedented Section 311 financial prohibitions against a Chinese bank; issued additional sanctions-related executive orders; and launched a novel financial sanctions program against the Maduro regime, targeting global bond and energy markets doing business in Venezuelan debt or oil. These steps reflect the growing importance of counter-illicit financing authorities and actions that leverage the financial transparency and legal and operational frameworks of our AML/CFT regime and others worldwide. This also affirms our need to invest more in these authorities as their mission continues to expand.

The critical importance and proven impact of money laundering prosecutions, confiscations, and targeted financial measures represent a compelling investment opportunity for Congress to achieve a high return with relatively marginal costs. These investments are also essential to

exploiting the financial information that our financial institutions continue to provide through significant investments of their own.

In addition to working with Treasury to restructure and resource CID to focus on all manner of illicit finance, Congress should provide protected resources to the Money Laundering and Asset Forfeiture Section of the Department of Justice and to Treasury's Office of Terrorism and Financial Intelligence. Such resources should be specifically protected to support: (i) criminal pursuit of money laundering and other illicit financing networks; (ii) targeting of primary money laundering concerns under Section 311 of the USA PATRIOT Act; and (iii) targeting of illicit financing networks under various sanctions authorities.

3. ***Strengthen Section 3 of the proposed Counter Terrorism and Illicit Finance Act to direct a more aggressive approach for Treasury to enhance financial transparency in a methodical, systematic, and strategic manner that: (i) addresses longstanding and substantial vulnerabilities in our financial system; and (ii) pursues reporting obligations based on straight-through processing that leverages new technologies, provides more bulk data for counter-illicit financing authorities, and ultimately reduces burdens on financial institutions.***

Financial transparency is crucial to advancing the objectives of our AML/CFT regime because it allows us to identify, track, and trace the sources, conduits, and uses of all manner of illicit finance that transit the financial system. Without financial transparency, financial institutions and regulators cannot identify, manage, or avoid risks ranging from financing al Qaeda to brokering nuclear proliferation to banking corruption. Law enforcement cannot track or trace progressively globalized criminal networks or their illicit proceeds. States cannot identify or recover stolen assets or proceeds of tax evasion. And financial pressure to address gross violations of international law by North Korea, Iran, Syria, Russia, or others becomes a hollow talking point rather than an operational instrument of global security.

Section 3 of the proposed legislation, when coupled with Sections 6 and 8, generally presents a clear, necessary, and ongoing framework to assist Treasury strategically lead the management of the U.S. AML/CFT regime, including with respect to enhancing financial transparency. In particular, Sections 3 and 6 enable Treasury to enhance the effectiveness and efficiency of AML/CFT regulations under the BSA based on law enforcement and other counter-illicit financing needs and priorities, including through the leading participation of the Department of Justice under Section 8.

However, Congress should also direct a more aggressive approach to enhance financial transparency in methodical, systematic, and strategic manner. Such an approach should include:

(1) Explicitly supporting Treasury's current rulemaking efforts to address clear, outstanding, and substantial counter-illicit financing vulnerabilities; and

(2) Directing Treasury to pursue and study reporting obligations based on straight-through processing that leverages new technologies, provides more bulk data to counter-illicit financing authorities, and ultimately reduces burdens on financial institutions.

(1) Explicitly support Treasury's current rulemaking efforts to address clear, outstanding, and substantial counter-illicit financing vulnerabilities.

As established through years of outreach, study, and rulemaking, Treasury's specific regulatory initiatives outlined below will:

- Provide highly useful information to law enforcement, national security authorities, and financial institutions charged with managing AML/CFT risk under current AML regulations;
- Reduce compliance challenges for banks and other financial institutions currently covered by AML regulation;
- Level the playing field, reduce regulatory arbitrage, and address systemic vulnerabilities in the current coverage of our AML regulations across our financial system; and
- Align our AML/CFT preventive measures with global standards issued under the leadership of the United States and other financial centers, thereby strengthening U.S. efforts to hold other jurisdictions accountable in combating transnational financial crime and protecting the integrity of the international financial system.

To advance these urgent and important interests, Congress should specifically:

a. *Support Treasury's issuance of a final rule extending AML/CFT preventive measures to registered investment advisers, consistent with AML/CFT global standards.* In August 2015, Treasury issued a proposed rule to include certain registered investment advisors as financial institutions under the BSA and requiring them to establish AML programs and report suspicious activity to FinCEN. Such action is required to help address the systemic challenges created by gaps in the financial system that are not covered by AML/CFT preventive measures. As Treasury has reported in the 2015 National Money Laundering Risk Assessment, as of April 2015, investment advisers registered with the SEC have reported more than $66 trillion assets under management. The current lack of AML/CFT regulation over this sector creates a significant blind spot in our understanding of whose interests are represented by this $66 trillion of assets, substantially undermining the transparency of our financial system. As stated by the Director of FinCEN at the time, "Investment advisors are on the front lines of a multi-trillion dollar sector of our financial system. If a client is trying to move or stash dirty money, we need investment advisors to be vigilant in protecting the integrity of their sector."

This gap also puts banks, broker-dealers, and other financial institutions currently covered by AML regulation in the unfair and difficult position of competing with or trying to manage illicit financing risks of the investment adviser sector they service. Failure to address this multi-trillion dollar vulnerability not only enables corrupt governing elites and other national security threats to hide in and profit from our financial system, it also puts more pressure on banks and other covered institutions to manage these risks without understanding the ownership of assets they hold or represent. As with other uncovered or poorly AML/CFT regulated sectors of our financial system, this systemic vulnerability forces banks and other covered financial institutions servicing such sectors to either accept these unknown and substantial risks, or walk away from the business. In turn, these pressures contribute to collateral challenges of financial exclusion or the growth of relatively unregulated "shadow banking" systems, particularly as AML/CFT regulatory enforcement actions continue to focus squarely on banks.

Congressional support for Treasury's proposed rulemaking to extend AML/CFT preventive measures to certain registered investment advisors may facilitate such necessary action by the Administration.

b. *Support Treasury's consideration of lowering the recordkeeping and travel rule thresholds for funds transfers from $3000 to $1000, consistent with global standards.* Such action is required to enhance the transparency of lower value funds transfers consistently abused to structure illicit financing transactions. Treasury's 2015 National Money Laundering Risk Assessment provides the latest evidence of such continued abuse. Lowering the thresholds to $1000 would literally triple the costs and risks for illicit financing networks engaged in such structuring.

Such action is also required to better protect the integrity of the money transmitter sector, which has increasingly suffered from financial exclusion associated with the well-established, illicit financing risks generally inherent in the cross-border services provided by this sector. Lowering the recordkeeping and travel rule thresholds – coupled with strengthening the consistency and effectiveness of AML/CFT supervision of this sector – will generate and substantiate greater confidence in the ability of money transmitters to assess and manage such illicit financing risk. In turn, such enhanced confidence will help address ongoing financial exclusion concerns that have plagued vulnerable corridors of the money transmitter sector for several years.

Maintaining a threshold of $1000 would also preserve a reasonable threshold well above the average value of cross-border remittances, thereby minimizing any potential collateral and exclusionary impact on legitimate and urgent demand for remittance flows.

Congressional support for Treasury's long-standing consideration to lower this threshold may facilitate such necessary action by the Administration.

c. *Support Treasury's consideration to extend AML/CFT preventive measures to the real estate industry, consistent with FATF global standards.* The longstanding global vulnerability of the real estate industry to money laundering is well-known. For this reason, FATF global standards direct countries to extend AML/CFT preventive measures to cover the real estate industry. Several historical and recent cases and investigative reporting by the media demonstrate that this vulnerability continues to be exploited in the United States, including most prominently in cities such as New York, Los Angeles, and Miami.

As in the case of investment advisors and money transmitters, failure to address the proven and systemic vulnerability of the real estate industry to money laundering not only undermines our counter-illicit financing efforts, it also places additional burden on banks and other AML-covered financial institutions servicing this industry. Such financial institutions must now apply heightened due diligence to real estate transactions to manage these risks effectively. This task would be much easier if the due diligence efforts of covered financial institutions were shared with the real estate industry itself through the extension of AML regulation.

Congress originally required Treasury to enact AML rulemaking to address the money laundering vulnerabilities associated with the real estate industry in October 2001, with the adoption of the USA PATRIOT Act. Treasury has long considered such rulemaking and has gathered important information to guide this effort through the ongoing issuance of geographic targeting orders. Congressional support may facilitate such action by the Administration to address this longstanding AML vulnerability in an effective, efficient, and systematic way.

(2) Direct Treasury to pursue and study reporting obligations based on straight-through processing that leverages new technologies, provides more bulk data to counter-illicit financing authorities, and ultimately reduces burdens on financial institutions.

The clear emergence of new technologies that can collect, protect, and analyze bulk data should facilitate AML/CFT reform efforts focused on reporting more financial data to counter-illicit financing authorities at a lower cost to financial institutions via straight through processing. As discussed below with respect to Section 7 of the proposed legislation, counter-illicit financing authorities should develop these technologies to exploit such bulk data and find patterns and networks of criminal or sanctioned activity operating within our financial system.

In order to facilitate systemic and low cost financial transparency required for bulk data analysis, Congress should support and direct Treasury action as follows:

a. *Support Treasury's issuance of a final rule requiring the reporting of cross border wire transfers.* Treasury's proposed rule requiring reporting of "Cross-Border Electronic Transmittal of Funds" was issued in September 2010, following six years of study required

by Congress. As anticipated by Congress 13 years ago and confirmed through six years of subsequent study by Treasury and ongoing counter-illicit financing efforts, such a rule would greatly assist relevant authorities in pursuing all manner of illicit finance. Due to the standardized, straight-through processing of such reporting, the comparative burden on industry in implementing this proposed requirement would be modest. As stated by the Director of FinCEN at the time of issuing the proposed rule more than seven years ago, "By establishing a centralized database, this regulatory plan will greatly assist law enforcement in detecting and ferreting out transnational organized crime, multinational drug cartels, terrorist financing, and international tax evasion. FinCEN has examined the cross-border reporting issue, taking into account the exceptional benefit to law enforcement and the modest cost to industry, and we look forward to working closely with both as this rule moves forward through the public comment process."

Such standardized reporting of cross-border wires should help lead to the development of a vastly more effective and efficient approach to AML/CFT reporting, combating illicit finance, and protecting our financial integrity and national security. Such reporting would also help offset traditional law enforcement concerns about raising reporting thresholds under the BSA, particularly with respect to currency transaction reports. Congressional support for Treasury's proposed rule issued more than seven years ago may facilitate necessary action by the Administration to finalize this rulemaking.

b. *Call upon Treasury to study the feasibility, effectiveness, and efficiency of requiring reporting of customer on-boarding and exiting pursuant to standardized reporting forms.* Such standardized and centralized reporting will dramatically enhance financial transparency and the effectiveness of the BSA and our AML/CFT regime in combating the full range of illicit financing. Standardization and centralization of such a reporting requirement should also minimize burden on financial institutions, including by reducing the need for various law enforcement requests for information, such as under Section 314(a) of the USA PATRIOT Act. Developing such a fundamental reporting requirement will take considerable time, effort, and study, but as with cross-border wire reporting, the benefits of such a requirement should far outweigh the costs. This is particularly true if such a requirement enabled relief from other requirements that may prove to be far less effective in delivering the financial transparency that counter-illicit financing authorities rely upon.

Congress should direct Treasury to commence such a study now, as it did in 2004 with respect to cross border wire reporting.

4. ***Expand, strengthen, and clarify the relationship between Sections 4 and 7 of the proposed Counter Terrorism and Illicit Finance Act to encourage the broadest innovation and application of technologies to combat illicit financing – including through expanded***

information-sharing between and among financial institutions and governmental authorities under Section 314 of the USA PATRIOT Act.

The highly intermediated and globalized nature of today's financial system presents enormous challenges for banks and other financial institutions in assessing and managing illicit financing risks. Such risks are often spread across and through various financial institutions in a manner that is impossible or extremely challenging for individual financial institutions to detect on their own. Section 314(b) of the USA PATRIOT Act begins to address this challenge by enabling financial institutions to share information about these risks under safe harbor protections from legal liability. Section 314(a) of the USA PATRIOT Act also helps address this challenge by enabling Treasury and law enforcement to request financial institutions to search for and report any information they may have about specifically named individuals, entities, or organizations suspected of engaging in money laundering or terrorist financing.

Section 4 of the proposed legislation clarifies and expands information sharing allowances under 314(b) of the USA PATRIOT Act in important ways, ultimately assisting individual financial institutions meet their AML program requirements and manage illicit financing risks in a more effective manner. Section 7 of the proposed legislation encourages the use of innovative technologies by financial institutions in meeting their AML program requirements by providing legal protection for financial institutions that utilize such technological innovation in carrying out their AML programs.

However, it is not clear that the legal protection for financial institutions to use technology under Section 7 extends to information sharing programs under Section 314(b) of the USA PATRIOT Act. Congress should clarify this extension in a manner that encourages financial institutions to apply technological innovations to enhance information sharing with other financial institutions – including the technology companies and advisors they employ – under the safe harbor protections of 314(b).

Moreover, Congress should strengthen, expand, and combine the information sharing provisions under Sections 314(a) and (b) of the USA PATRIOT Act to clearly enable sharing of bulk information on higher risk customers, transactions, and/or markets between and among various combinations of financial institutions, law enforcement, and Treasury. Such action will enable common and joint analysis of various illicit financing risks – including money laundering, terrorist financing, other money laundering predicate offenses, sanctions evasion, and tax evasion. Such information sharing should be protected under the current provisions of Section 314(b) of the USA PATRIOT Act, including safe harbor from legal liability.

By clearly authorizing such information sharing, Congress will enable financial institutions and counter-illicit finance authorities to:

- Capitalize on new technologies that can collect, protect, analyze, and exploit various types of bulk data to find patterns and networks of criminal or sanctioned activity operating within our financial system;

- Combine and leverage counter-illicit financing expertise across financial institutions and counter-illicit finance authorities;

- Facilitate various pilots that inform all counter-illicit financing stakeholders of how best to apply different technologies to financial data in ways that effectively and efficiently identify suspicious activity; and

- Inform the risk-based approach to combating illicit financing by identifying new typologies of illicit financing and by facilitating more effective segmentation of illicit financing risk across different types of customers, products, services, and markets.

5. ***Strengthen and expand Section 6 of the proposed Counter Terrorism and Illicit Finance Act by directing Treasury to strengthen, expand, institutionalize, and lead consultations with financial sectors and other industries covered by AML/CFT regulation in establishing and implementing priorities for U.S. AML/CFT policy.***

   As the BSA has expanded in scope and objectives, it has become substantially more complex and important. Consequently, policy and regulatory expectations for financial institutions with respect to AML/CFT risk management, sanctions compliance, and related matters of financial integrity and security have increased dramatically. These expectations greatly surpass traditional compliance roles in financial institutions, and now cover the entire enterprise of a financial institution or group, including at the board level, senior executive management, lines of business, and audit and operational functions. Such "culture of compliance" and "enterprise-wise risk management" expectations have purposefully forced financial institutions to share ownership in the expanding mission of our AML/CFT regime – including with respect to combating all forms of financial crime, safeguarding the integrity of our financial system, and protecting our national security.

   These increasingly expansive, complex, and important roles and responsibilities of our financial institutions and other industries covered by BSA regulation demand a much stronger partnership with government. Treasury should substantially expand, elevate, and integrate its leadership in consulting with financial institutions and other vulnerable industries on issues of financial integrity and national security advanced through our AML/CFT regime. Such consultation and partnership should directly inform our AML/CFT policies and priorities.

6. ***Amend sub-Section 9(a)(3) and sub-Section 9(a)(1) of the proposed Counter Terrorism and Illicit Finance Act to support implementation of Treasury's CDD rule.***

As explained in greater detail below, Congress should amend sub-Section 9(a)(3) and sub-9(a)(1) of the proposed legislation to support implementation of Treasury's CDD rule for the following reasons:

(1) The fundamental interests and objectives of the CDD rule demand urgent implementation as soon as reasonably possible;

(2) Reopening the CDD rule now will: (i) threaten the careful balance of effectiveness and workability achieved through an exhaustive and unprecedented process of outreach and rulemaking; and (ii) undermine Treasury's credibility and 18 months of compliance preparation and investment by covered financial institutions;

(3) The proposed legislation fundamentally misconstrues Treasury's CDD rule;

(4) The proposed legislation creates a substantial additional and unnecessary burden on financial institutions and FinCEN;

(5) The proposed legislation discounts the compelling basis for differences in the detailed definitions and types of beneficial ownership information that already exist and may be required from various U.S. and other legal entities; and

(6) Treasury already has the authority to amend the CDD rule as necessary to enhance its effective and workable implementation, including for purposes of aligning CDD beneficial ownership requirements to the extent practical with company formation requirements.

(1) The fundamental interests and objectives of the CDD rule demand urgent implementation as soon as reasonably possible.

Treasury's CDD rule – issued on May 11, 2016 – clarifies, consolidates, and strengthens CDD requirements for financial institutions currently covered by AML customer identification program requirements. The final rule gives such financial institutions two years' time – until May 11, 2018 – to align their CDD policies and programs with the requirements set forth in the rule.

As stated and discussed at length in the preamble of the rule, such action is urgently required to:

- Enhance the availability to law enforcement, as well as to the Federal functional regulators and self-regulatory organizations, of beneficial ownership information about legal entity customers obtained by U.S. financial institutions, which assists law enforcement financial investigations and a variety of regulatory examinations and investigations;

- Increase the ability of financial institutions, law enforcement, and the intelligence community to identify the assets and accounts of terrorist organizations, corrupt actors, money launderers, drug kingpins, proliferators of weapons of mass destruction, and other national security threats, which strengthens compliance with sanctions programs designed to undercut financing and support for such persons;

- Help financial institutions assess and mitigate risk, and comply with all existing legal requirements, including the BSA and related authorities;

- Facilitate reporting and investigations in support of tax compliance, and advance commitments made to foreign counterparts in connection with the provisions commonly known as the Foreign Account Tax Compliance Act (FATCA);

- Promote consistency in implementing and enforcing CDD regulatory expectations across and within financial sectors; and

- Advance Treasury's broad strategy to enhance financial transparency of legal entities.

Reopening the CDD rule and delaying its implementation – as proposed by the draft legislation – would complicate implementation of a rule that is long overdue and postpone advancement of the urgent and fundamental interests and objectives summarized above.

(2) Reopening the CDD rule now will: (i) threaten the careful balance of effectiveness and workability achieved through an exhaustive and unprecedented process of outreach and rulemaking; and (ii) undermine Treasury's credibility and 18 months of compliance preparation and investment by covered financial institutions.

Sub-Section 9(a)(3) of the proposed legislation states, "The Secretary of the Treasury shall, simultaneously with issuing the regulations prescribed under paragraph (2) [to carry out the company formation reform presented by Section 9 of the proposed legislation], *revise the final rule titled "Customer Due Diligence Requirements for Financial Institutions"* (May 11, 2016, Fed. Reg. 29397) *as necessary to conform with this Act, and the regulations issued under paragraph (2)."* (Emphasis added).

As discussed in the preamble, the CDD rule incorporates and benefits from exhaustive stakeholder comments collected through an outreach campaign unprecedented in the history of BSA rulemakings. Such outreach included six years of intensive consultations with U.S. financial institutions, regulators, law enforcement, and national security authorities – including through five public hearings hosted by Treasury and the regulators in Washington, DC, New York, Los Angeles, Chicago, and Miami. It also included substantial preparation and comment on formal guidance issued by FinCEN and the federal financial regulators in 2010; notice and comment on a follow-on Advanced Notice of Proposed Rulemaking issued in March 2012; and notice and comment on a subsequent Notice of Proposed Rulemaking issued in August

2014. It also included substantial discussions with the global AML/CFT community, including through several years of CDD standard-setting and follow-up reports by the United States on the FATF's peer review assessment of the U.S. AML/CFT regime. As explained in the section above summarizing the modern evolution of the BSA, the FATF is the global policymaking body that the U.S. helps lead in developing global standards, policies, and processes governing AML/CFT, sanctions, and counter-proliferation finance regimes in countries around the world.

This exhaustive outreach, consultation, and preparation associated with Treasury's CDD rule resulted in a carefully balanced rule that is both: (i) effective in advancing the counter-illicit financing and other fundamental interests summarized above; and (ii) workable in establishing a baseline and level playing field across a highly diversified set of U.S. financial institutions and industries.

Opening the CDD rule up to revision now invites opportunism by special interests to upset the appropriate balances struck by Treasury after so many years of consultation across all interests. Opening the CDD rule up to revision now would also substantially undercut the credibility of Treasury with AML/CFT stakeholders across the domestic and international financial system and across the global counter-illicit finance community. Opening the CDD rule up to revision now would also penalize those U.S. financial institutions that have already invested in policies, programs, training, and systems and controls to comply with the requirements of the final rule, issued over 18 months ago.

(3) The proposed legislation fundamentally misconstrues Treasury's CDD rule.

Sub-Sections 9(a)(1) and 9(a)(3) of the proposed legislation delay and jeopardize implementation of the CDD rule for purposes of conforming beneficial ownership requirements between CDD and company formation and to assist financial institutions meet their compliance obligations under the CDD rule. This fundamentally misconstrues the objectives, scope, requirements, and integrity of the CDD rule.

As discussed exhaustively in Treasury's consultations and outreach in developing, proposing, and finalizing the CDD rule – and as explained in the preamble of the rule – Treasury specifically, deliberately, and necessarily crafted the CDD rule as an essential but independent component of Treasury's three-prong strategy to enhance the transparency of legal entities. As summarized above, this three-prong strategy is also only one of six primary objectives stated in the preamble for advancing the purposes of the BSA through the issuance of the CDD rule. The specific scope, requirements, and integrity of beneficial ownership information in the CDD rule were specifically tailored to effectively advance all six of the BSA objectives summarized above in a consistent and workable manner for our financial system. The scope, objectives, requirements, and integrity of beneficial ownership information may not be the same when considering how best to achieve corporate transparency in the U.S. company formation process.

For example, the scope of the beneficial ownership requirements of the CDD rule equally encompasses both U.S. *and foreign* legal entity customers of covered U.S. financial institutions – subject to qualifications, exceptions, and exemptions carefully drawn through the rulemaking and outreach processes described above. The CDD rule's coverage of foreign legal entities – which are not subject to domestic company formation processes – is necessary given the proven and systematic abuse of foreign as well as domestic legal entities by all manner of illicit financing threats. Yet, necessary company formation reform in the United States – including as proposed by Section 9 – cannot cover the formation of foreign legal entities.

Owing in part to such differences in objectives and scope, beneficial ownership requirements for CDD purposes may not be the same as for company formation purposes. While the counter illicit financing interests in the transparency of legal entities are substantially similar for purposes of CDD by financial institutions and company formation reform, there are other important objectives and interests relevant for each of these initiatives, including with respect to effectiveness and workability. For purposes of CDD by financial institutions, these other objectives as summarized above were heavily explored and discussed through the CDD outreach and rulemaking process. For example, a paramount concern in this process was establishing a consistent approach and consistent baseline requirements for CDD across a range of different types of domestic and foreign legal entities for a highly diversified and intermediated U.S. financial system. This particular concern in establishing beneficial ownership requirements for CDD by financial institutions may not be as relevant as other concerns or objectives associated with establishing effective and workable beneficial ownership requirements for U.S. company formation processes.

The beneficial ownership requirements of the CDD rule are for covered financial institutions to identify and verify the *identity* of the beneficial ownership of certain legal entity customers. In meeting these beneficial ownership requirements, Treasury has explicitly and deliberately clarified that covered financial institutions can and should apply the systems and controls they have already developed and implemented for their customer identification and verification programs. By applying such customer identification and verification program requirements to the identification and verification of beneficial ownership, the CDD rule minimizes burden for financial institutions covered by the CDD rule. In part for this reason, Treasury deliberately issued the CDD rule to cover those financial institutions that have already been subjected to customer identification and verification requirements under Section 326 of the USA PATRIOT Act by law and regulation for well over a decade.

As as explained exhaustively in the CDD rulemaking process and the preamble to the rule, Treasury did not require covered financial institutions to verify the *status* of beneficial ownership. Rather, as stated by FinCEN in the preamble to the rule:

> ...[A] covered financial institution may rely on the information supplied by the legal entity customer regarding the identity of its beneficial owner or owners, provided that

> it has no knowledge of facts that would reasonably call into question the reliability of such information. FinCEN anticipates that, in the overwhelming majority of cases, a covered financial institution should be able to rely on the accuracy of the beneficial owner or owners identified by the legal entity customer, absent the institution's knowledge to the contrary....

As discussed elsewhere in the preamble and as required by the CDD rule, this general reliance by a financial institution on the identification of the beneficial owner by the customer does not mitigate a financial institution's requirement to then verify the identity of the beneficial owner. Similar to the requirements of customer identification and verification programs, such verification of a beneficial owner's identity will generally rely on copies of identification documents supplied by the financial institution's customer, or accountholder. Importantly, this reliance allows the financial institution to avoid the substantial burden of systematically verifying the *status* of the beneficial owner.[1]

This reliance raises potential concern about the integrity of beneficial ownership information needed for purposes of effectively advancing the CDD interests and BSA objectives summarized above. Again, this concern was exhaustively discussed in the CDD rulemaking process. As explained by FinCEN in the preamble to the rule, law enforcement has determined that it can effectively use the beneficial ownership information collected and verified (again, with respect to the *identity* of the beneficial owner rather than the *status* of the beneficial owner) under the CDD rule:

> ...[W]hile a criminal may well lie regarding a legal entity's beneficial ownership information, verification of the identity of the natural person(s) identified as a beneficial owner will limit her ability to do so in a meaningful way such that she could avoid scrutiny entirely. Furthermore, as the Department of Justice has noted throughout this rulemaking process, a falsified beneficial ownership identification would be valuable evidence in demonstrating criminal intent. Even the verified identity of a natural person whose status as a beneficial owner has not been verified provides law

[1] In cases of elevated risk or where the financial institution has reason to suspect the reported beneficial ownership of a covered legal entity customer, financial institutions should consider verifying the *status* of the reported beneficial owner, including by obtaining supporting documentation of beneficial ownership status from the customer or third parties. In such limited instances, there may be some differences between the definition of beneficial ownership in the CDD rule and the definition of beneficial ownership by the relevant company formation authority, but such differences should be highly manageable in discussions with the customer and / or any relevant third parties as appropriate to understand the beneficial ownership structure of the relevant legal entity customer. It is certainly more manageable than creating an expectation that financial institutions will systematically verify the status of beneficial ownership. And as discussed below, such definitional differences in beneficial ownership are inevitable where a financial institution maintains accounts for various legal entities subjected to various potential beneficial ownership disclosure requirements by different authorities for different purposes.

enforcement and regulatory authorities with an investigatory lead from whom they can develop an understanding of the legal entity.

At this point, it is unclear how the specific requirements and integrity of beneficial ownership information collected under anticipated and necessary U.S. company formation reform will need to be shaped in a manner that is both effective for the purpose of combating criminal abuse of U.S. legal entities and workable for U.S. company formation processes. Indeed, for this reason, the proposed legislation appropriately delegates rulemaking authority to Treasury to develop such detailed requirements.

It is also unclear what other objectives or interests may be relevant to or may substantially inform beneficial ownership requirements in U.S. company formation reform processes. For example, such requirements may also consider current beneficial ownership disclosure obligations and processes relevant to U.S. legal entities for tax purposes, such as in obtaining employer identification numbers from the IRS. It may be that such requirements and the associated integrity of the beneficial ownership information to be collected under company formation reform necessarily differ in some respects from the beneficial ownership information required under the CDD rule. Again, these are detailed issues that Treasury will need to address in the rule making process.

(4) The proposed legislation creates a substantial additional and unnecessary burden on financial institutions and FinCEN.

The effect of sub-Section 9(a)(3) as drafted will impose substantial additional burden on U.S. financial institutions. By opening up the CDD rule to conform beneficial ownership requirements with those to be established under company formation reform, the proposed legislation creates an expectation that U.S. financial institutions should verify the status of beneficial ownership of their U.S. legal entity customers covered by the CDD rule. As explained above and discussed at length in the CDD rulemaking process, such an expectation was specifically rejected in the CD rule because of the substantial and unnecessary burden this would place on financial institutions.

Moreover, sub-Section 9(a)(1) creates an expectation that financial institutions should independently verify the status of such customers by obtaining company formation information from FinCEN. Specifically, the proposed Transparent Incorporation Practices presented in Sub-Section 9(a)(1) would require FinCEN to provide beneficial ownership information of certain U.S. legal entities upon receipt of, inter alia, "a request by a financial institution, with customer consent, *as part of the institution's compliance with due diligence requirements imposed under the Bank Secrecy Act, the USA PATRIOT Act, or other applicable Federal or State law*." (Emphasis added).

This verification burden is particularly significant and entirely unnecessary. Again, as explained above and discussed exhaustively in Treasury CDD rulemaking process, financial

institutions can and should rely on their customers to produce beneficial ownership information, including any relevant supporting documentation requested by the financial institution. Even in certain high-risk instances where the financial institution should verify the status of the beneficial ownership disclosed to them by their legal entity customers, financial institutions should generally obtain company formation and other corporate documents from their customers, not from company formation authorities or FinCEN.

This verification requirement would also impose an incredible burden on FinCEN, which would have to devote unknown resources to managing potentially thousands of requests for company formation documents from any one of tens of thousands of financial institutions currently covered by the CDD rule, possibly on a daily basis.

(5) The proposed legislation discounts the compelling basis for differences in the detailed definitions and types of beneficial ownership information that already exist and may be required from various U.S. and other legal entities.

Differences in various definitions of beneficial ownership already exist and inevitably will continue to exist for various U.S. legal entities. This is true across the domestic and international financial system and global economy, including for U.S. and foreign tax compliance purposes, for SEC and other disclosure requirements associated with public markets, and for different AML/CFT and sanctions risk management regimes required by different jurisdictional authorities and different financial institutions' risk-based policies. Even within the CDD rule itself, different beneficial ownership requirements or expectations exist for different types of legal entities such as trusts, charities, or certain pooled investment vehicles. And different types of legal entities from different jurisdictions will inevitably have differences in definitions of beneficial ownership, based on illicit financing and other risk factors, legitimate economic interests, and practicality considerations associated with the structures and beneficial ownership implications of such legal entities.

This cursory acknowledgement of the differences in the detailed definitions of beneficial ownership – for different types of legal entities, from different authorities and different financial institutions, for different purposes and different types of risk management, and across different jurisdictions – underscores the importance of the careful, thoughtful, balanced, and consistent approach that Treasury has taken to the beneficial ownership requirements in the CDD rule. It also underscores the challenges and practical impossibility of aligning all definitions and approaches to beneficial ownership that may otherwise apply for various legitimate reasons to U.S. and other legal entities subject to the CDD rule.

(6) Treasury already has the authority to amend the CDD rule as necessary to enhance its effective and workable implementation, including for purposes of aligning CDD beneficial ownership requirements to the extent practical with company formation requirements.

The arguments presented above in support of Treasury's CDD rule and the compelling reasons that support detailed differences in current beneficial ownership requirements for various legal entities should not discount the obvious benefits of harmonizing beneficial ownership requirements and expectations as much as practically reasonable. For this reason, Treasury, U.S. regulators, and their counterparts around the world have invested considerable time and effort over the past generation in developing global standards to govern beneficial ownership and other fundamental requirements of preventive measures associated with AML/CFT regimes. These authorities also coordinate the development and implementation of such requirements with other global standards, including those governing tax compliance and financial and market safety, soundness, and stability. Nonetheless, the particular interests and objectives that drive the need for beneficial ownership disclosure requirements in any given scenario require flexibility that often defies uniformity.

Of course, further guidance for implementing the CDD rule will be necessary. Potential revisions to the CDD rule itself may also be necessary. But any such revisions must carefully consider how the requirements in the current rule carefully balance the types of complexities outlined above. Treasury already has the authority to manage this process. Congress should recognize this, including by supporting Treasury's issuance of the CDD rule.

Moreover, as explained in my recommendation below, giving Treasury the authority to manage implementation of the company formation reform process will enable Treasury to harmonize the beneficial ownership requirements of this process as much as practically reasonable with the beneficial ownership requirements under the CDD rule. And Treasury can always revise the CDD rule as needed to enhance its effectiveness and workability across all stakeholder interests.

Managing these kinds of complexities to meet the compelling law enforcement, financial integrity, and national security interests summarized in the preamble to the CDD rule should be left to the expertise of Treasury, counter-illicit financing authorities, financial regulators, and industry, including through knowledge gained in the unprecedented outreach and rulemaking process that guided the development of the CDD rule over several years.

7. ***Otherwise consider Section 9 of the proposed Counter Terrorism and Illicit Finance Act and swiftly enact company formation reform to require the systemic reporting and maintenance of beneficial ownership information pursuant to an effective and workable framework.***

Congressional action is urgently required to address a longstanding, well-understood, and primary vulnerability in the U.S. AML/CFT regime. The systemic challenges posed by the chronic abuse of U.S. legal entities to mask the identities and illicit financing activities of the full scope of criminal and illicit actors has been well known for far too long. For several years and through at least four consecutive administrations, various arms of the Executive Branch – including several law enforcement agencies and the Department of the Treasury – have called for meaningful action on this issue. For an even longer period, the Senate Permanent

Subcommittee on Investigations, beginning with the prior leadership of Senator Levin, has called for such action.

Unlike in the case of beneficial ownership and CDD, Treasury currently does not have the authority to effectively address this longstanding and fundamental vulnerability in our AML/CFT regime. Aside from the amendments to Section 9 of the proposed legislation discussed above, the particular company formation reform process presented by Section 9 provides Treasury with the authority and flexibility to close down this ongoing abuse of U.S. legal entities pursuant to an effective and workable framework.

It is important to recognize that several alternative approaches exist for addressing this core vulnerability of abuse of U.S. legal entities. Many such alternative approaches have been considered by Congress before, and some of these alternatives also present effective and workable solutions. Of course, Congress may consider further amendments to Section 9 based on these alternative approaches. However, Congress should swiftly adopt company formation reform to require the reporting and maintenance of beneficial ownership information pursuant to an effective and workable framework, such as presented in Section 9 of the proposed legislation. As discussed above, such company formation reform should proceed as an essential but independent complement to Treasury's CDD rule, rather than as an interdependent and co-joined requirement. And such company formation reform should empower Treasury with both the authorities and resources to manage this process moving forward, as reflected by the proposed legislation.

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Representative Jeb Hensarling
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Representative Maxine Waters
Ranking Member, Committee on Financial Services
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December 7, 2017

Dear Honorable Hensarling and Honorable Waters,

I am writing to you as a specialist on human trafficking and illicit financial flows that has testified and met with your staff on issues of accountability and curtailing threat finance. I am the founder and director of the Terrorism, Transnational Crime and Corruption Center, the only institution of its kind that addresses different forms of illicit activity and their intersection with corruption and terrorism. I am part of the scientific committee of the new Homeland Security Center of Excellence at George Mason University on network analysis and transnational crime and a member of the Council on Foreign Relations.

I am requesting that this letter be added to the comments on last week's hearing in regards to the November 29, 2017 Joint Hearing Entitled "Legislative Proposals to Counter Terrorism and Illicit Finance."

My comments focus on Section 9 of the discussion draft of the "Counter Terrorism and Illicit Finance Act."[1] In my writings such as my book *Dirty Entanglements: Corruption, Crime and Terrorism,* congressional testimony and research on illicit trade, I have found diverse sources that link corruption, transnational crime, and threat finance and money laundering to anonymous shell companies both in the have been shown to represent an important nexus of corruption, transnational organized crime, and terrorism, and money laundering. These linkages, facilitated by non-transparent financial flows have harmed U.S. security both domestically and our personnel stationed overseas. Moreover, development

[1] Counter Terrorism and Illicit Finance Act (Discussion Draft), H.R.____, 115th Cong., 1st Sess., (November 14, 2017), https://financialservices.house.gov/uploadedfiles/bills-115hr-pih-ctifa.pdf.

funds intended to improve the lived of individuals in post-conflict regions and other problematic areas are too frequently diverted into the hands of corrupt officials who do not share our political or economic interests.

Anonymous companies allow crime to pay. As drug traffickers can launder money, human traffickers and smugglers can pay safe houses and terrorists can move them money unimpeded to offshore havens as seen in the Panama Papers. Anonymous companies, as I have testified before your committee are used to purchase real estate that can distort housing markets, show that crime does pay, and move individual farther away from their jobs.

There is a growing awareness of these problems and growing bi-partisan support to counter anonymous companies and require the beneficial owners of companies to be declared.

The following provisions discussed at the hearing in reference to Section 9 of the draft legislation are particularly important in assisting law enforcement go after those seeking to obscure the illicit source of their funds. These measures include the following:

1. Ensure that domestic law enforcement has access, including federal, state, tribal, and local, to the Financial Crime Enforcement Network's (FinCEN) database of beneficial ownership information. This shouldn't require a subpoena.

2. Ensure that foreign law enforcement has access to beneficial ownership information so that it can be used in criminal and civil prosecutions. There is increasing interest in many locales including financial centers overseas to increase available information.

3. Require foreign nationals to file their beneficial ownership information with FinCEN, including submitting a scanned copy of the relevant pages of their non-expired passport to FinCEN and define the term "applicant."

4. Add an enforcement mechanism to the discussion draft. This could be done by making the state incorporation process dependent on beneficial ownership information being provided to FinCEN. It could potentially be done by ensuring FinCEN has the authority to regulate in this area in order to have current listings from the states about all of the corporations and LLCs that are active.

5. Allow identification for beneficial owners to include non-expired state issued identification to meet the requirement if they do not have a non-expired U.S. driver's license or passport.

Centrality of Beneficial Ownership

Understanding the linkages between illicit financial flows and insecurity has become increasingly clear after the revelations of the Panama and the Paradise Papers. The definition of Beneficial Ownership needs to be clarified to ensure that people are not listed as beneficial owners to mask the true identity of the holder of the assets. Knowing the beneficial owners has proved very helpful in countering human trafficking that acquires on property with known owners. Financial pressure can be placed by mortgage holders on the hotels where drug trades and human trafficking are going on. With beneficial ownership, it is possible to go after key facilitators of this activity as has been done successfully by HSI of Homeland Security.

In conclusion, there are important changes that need to be implemented in the proposed legislation to make it more effective in countering transnational crime, diverse forms of illicit trade and terrorism.

Sincerely,

Louise Shelley

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EXECUTIVE DIRECTOR

6 December 2017

The Honorable Stevan E. Pearce
Chairman
Subcommittee on Terrorism and Illicit Finance
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Edwin G. Perlmutter
Ranking Member
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Committee on Financial Services
U.S. House of Representatives
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The Honorable W. Blaine Luetkemeyer
Chairman
Subcommittee on Financial Institutions and
Consumer Credit
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable W. Lacy Clay
Ranking Member
Subcommittee on Financial Institutions and
Consumer Credit
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Messrs Chairman and Representatives Perlmutter and Clay,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our perspective on proposed legislation entitled the "Counter Terrorism and Illicit Finance Act," which was the subject of the joint subcommittee hearing last week.

The FOP agrees that it is necessary to update and strengthen the tools law enforcement needs to combat criminals who infiltrate our nation's financial system. We are very pleased that the beneficial ownership language from H.R. 3089, the "Corporation Transparency Act," is included in the draft. The FOP has spent years calling for the collection of this data to investigate and prosecute money launderers and other bad actors abusing U.S. financial institutions to conceal or clean profits from illicit activities.

In order to profit from their unlawful activities, criminals and criminal organizations need the ability to launder their proceeds and, regrettably, the U.S. financial system is vulnerable to exploitation. Without access to critical information like beneficial ownership, law enforcement does not have the robust tools it needs to catch and deter individuals and organized syndicates from using our banking laws to hide or launder money from their illegal operations. As this legislation continues to develop, we strongly urge the Committee to update and strengthen our anti-money laundering laws.

First and foremost, the legislation must require that beneficial ownership information be provided to local, State or Federal law enforcement officers conducting an investigation upon presentation of a lawful court order. The current draft would prevent State and local law enforcement from receiving this data and, with more than 90% of U.S. law enforcement operating at the State or local level, it makes no sense to prevent

them from investigating financial crimes or the criminal use of our financial institutions by criminals or criminal organizations. Excluding State and local police and prosecutors from gaining access to this information would severely limit the utility of this legislation.

Similarly, law enforcement should be able to access this information with any valid court order and not limit their ability to conduct a full and complete investigation only after the individual has been charged or indicted. Investigations in cases involving networks of linked accounts or anonymous shell corporations are difficult and time-consuming. Broader access to beneficial ownership information is vital if law enforcement is going to protect our financial system. The collection of ownership information will not help law enforcement combat money launderers or illicit financiers if our ability to access it is so tightly restricted. The FOP supports the language of H.R. 3089 on this issue.

We are also concerned that our counterparts overseas may not be allowed if provided beneficial ownership information through appropriate international agreements, to use the information in criminal cases. While we support law enforcement globally, our specific concern is that we then would be limited in what we can expect in return. Since bad foreign actors increasingly seek the safety and stability of the U.S. economy, any legislation must be sure not to create any obstacles to information that can help officers follow the money and shutdown illegal operations wherever they are located.

On behalf of the more than 330,000 members of the Fraternal Order of Police, I want to thank both of your Subcommittees for their work on this important issue. The FOP stands ready to assist these efforts in any way we can to ensure that our financial systems are protected and to shut down the money laundering operations of these criminal enterprises. If we can provide any additional information or insights on this issue, please do not hesitate to contact me or my Senior Advisor, Jim Pasco, in my Washington office.

Sincerely,

Chuck Canterbury
National President

cc: The Honorable T. Jeb Hensarling, Chairman, Committee on Financial Services
The Honorable Maxine M. Waters, Ranking Member, Committee on Financial Services

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December 6, 2017

The Honorable Steve Pearce
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The Honorable Blaine Luetkemeyer
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The Honorable Ed Perlmutter
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The Honorable Lacy Clay
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RE: November 29, 2017 Joint Hearing Entitled "Legislative Proposals to Counter Terrorism and Illicit Finance"

Dear Chairmen Pearce and Luetkemeyer and Ranking Members Perlmutter and Clay,

I am pleased to note the recent hearing on "Legislative Proposals to Counter Terrorism and Illicit Finance." All of the witnesses recognized the threats posed by anonymous shell companies. They endorsed the need to collect and make available to law enforcement beneficial ownership information.

I am a former U.S. intelligence officer and Treasury Special Agent. My areas of expertise are anti-money laundering and counter-terrorist finance (AML/CFT). I have written four books on the subjects and numerous articles. I have testified before the Subcommittee on Terrorism and Illicit Finance. Last week, I testified before the Senate Judiciary Committee on their hearing on *S.1241: Modernizing AML Laws to*

Combat Money Laundering and Terrorist Finance., where every single witness similarly endorsed the need to collect and make available to law enforcement beneficial ownership information.

I am very pleased that Congress is moving forward to provide a degree of transparency regarding beneficial ownership of U.S. shell companies. This is a very important issue. Criminal organizations, kleptocrats, tax cheats, and terrorists have long used the anonymity offered by shell companies to avoid scrutiny, launder money, evade taxes and engage in other forms of financial crime.

Since my "retirement," I have traveled the world training foreign law enforcement, intelligence agencies, and customs services in AML/CFT on behalf of the U.S. government. During my discussions with foreign counterparts, I am invariably asked by foreign law enforcement about an investigation they are conducting with ties to a "Delaware company." They ask if I can assist them in obtaining beneficial ownership information. There is nothing I can do to help. It is quite embarrassing – particularly when I am lecturing them on the need for financial transparency.

Regarding the draft bill, I support the full testimony presented by Stefanie Ostfeld of Global Witness, a member of the FACT Coalition, at the November 29th hearing. In particular, I endorse the following points she made regarding beneficial ownership information:

1. Ensure that domestic law enforcement has access, including federal, state, tribal, and local, to the Financial Crime Enforcement Network's (FinCEN) database of beneficial ownership information. This shouldn't require a subpoena.
2. Ensure that foreign law enforcement has access to beneficial ownership information so that it can be used in criminal and civil prosecutions.
3. Require foreign nationals to file their beneficial ownership information with FinCEN, including submitting a scanned copy of the relevant pages of their non-expired passport to FinCEN and define the term "applicant."

I appreciate the opportunity to present my views. I commend your continued efforts to improve our legislative efforts to combat terrorist financing, money laundering, and other forms of illicit finance.

Sincerely,

John A. Cassara

cc The Honorable Jeb Hensarling, Chairman, U.S. House Financial Services Committee
The Honorable Maxine Waters, Ranking Member, U.S. House Financial Services Committee

December 5, 2017

The Honorable Steve Pearce
2432 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Ed Perlmutter
1410 Longworth House Office Building
Washington, D.C. 20515

Re: Discussion draft of the Counter Terrorism and Illicit Finance Act

Dear Representative Pearce and Representative Perlmutter:

Main Street Alliance, a network of small business owners throughout the country, writes to comment on the hearing of the discussion draft of the Counter Terrorism and Illicit Finance Act. Specifically, we write to urge to you keep and strengthen Section 9 of the draft involving the collection of beneficial ownership information. Main Street small businesses want to know who they are doing business with, who their competition is for contracts, and who is doing business in their communities.

Requiring secretive businesses to come out from the shadows will benefit small businesses in several ways. It will reduce conflicts of interest and cronyism in contracting, as well as curb false billing of contractors, and fraudulent certification of small businesses. Furthermore, ownership information will help prevent those who previously defrauded taxpayers from establishing a new sham operation and winning new contracts. In short, transparency levels the playing field so that businesses will engage in open competition based on product or service quality, organizational efficiencies, and talent.

Providing ownership information is not a burden for small businesses. Small business owners know who owns and controls their enterprises. The definition of beneficial owner in the bill is easy for any small business owner who is not engaged in wrongdoing (and thereby seeking anonymity through complexity) to understand. Small businesses do not have complex ownership structures, so we do not see among our members the kinds of concerns raised by some during the hearing.

Providing one's name, address and identification is not costly or time consuming. The requirements in the draft bill do not unduly complicate the corporate formation process and the

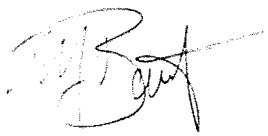
potential benefits of greater transparency, as detailed above, are important to our businesses and communities.

If passed, Section 9 of the discussion draft will reduce uncertainty and liability when working with subcontractors or other businesses in the supply chain. It will give business owners confidence that there is accountability in the system.

To ensure sham businesses are kept in check, we urge you to keep the penalties and strengthen the bill so that there is adequate enforcement. The threats posed by unfair competition, stolen contracts, and unaccountable damage to local economies are very serious concerns, and we hope the Committee members appreciate the consequences of inaction.

Thank you for the opportunity to comment. We look forward to working with you. For questions, please contact Sapna Mehta, Legislative Policy Director, at sapna@mainstreetalliance.org.

Signed,



Amanda Ballantyne
National Director
Main Street Alliance

National District Attorneys Association
1400 Crystal Drive, Suite 330, Arlington, VA 22202
703.549.9222 / 703.836.3195 Fax
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December 7, 2017

The Honorable Jeb Hensarling
Chairman
House Financial Services Committee
United States House
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Financial Services Committee
United States House
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters,

On behalf of the National District Attorneys Association (NDAA), the largest prosecutor organization representing 2,500 elected and appointed District Attorneys across the United States as well as 40,000 Assistant District Attorneys, I write regarding the most recent hearing you held entitled "Legislative Proposals to Counter Terrorism and Illicit Finance", specifically the *Counter Terrorism and Illicit Finance Act.*

As part of that legislative proposal, the committee is considering what information is available to law enforcement agencies, and through what process that information is obtainable. As end users of evidence collected throughout the investigative process, it is imperative that prosecutors have as much information as possible in order to determine the best course of action for prosecuting an individual or entity that has committed a crime. Law enforcement and prosecutors must have access to that beneficial owner information when legally authorized by the court, including through criminal and administrative subpoenas.

At a somewhat alarming rate, our members are seeing increased use of shell corporations as fronts for various criminal activities including money laundering and fraud, often times by foreign nationals. Additionally, fraud and other laundering efforts impact local businesses and individuals, creating a direct connection to the well-being of the communities we serve. Obtaining owner information creates a critical information-sharing tool for law enforcement to investigate the real identity of individuals creating fronts for their illicit gains. Unfortunately, the legislation would restrict access to the beneficial ownership information to federal law enforcement agencies, which demonstrates a fundamental misunderstanding that the majority of investigative work and prosecution takes place at the state and local level.

We appreciate your efforts on addressing this issue, and hope you will take the above suggestions into consideration when marking up the draft legislation. We look forward to working with you and your staff to provide a necessary tool for law enforcement and prosecutors to combat the use of shell companies and other nontransparent entities created as a front for criminal activity.

Sincerely,

Michael O. Freeman
President

OXFAM
America

December 7, 2017

The Honorable Steve Pearce
Chairman, Subcommittee on Terrorism and Illicit Finance
U.S. House Financial Services Committee
2432 Rayburn House Office Building
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Chairman, Subcommittee on Financial Institutions and Consumer Credit
U.S. House Financial Services Committee
2230 Rayburn House Office Building
Washington, DC 20515

The Honorable Ed Perlmutter
Ranking Member, Subcommittee on Terrorism and Illicit Finance
U.S. House Financial Services Committee
1410 Longworth House Office Building
Washington, DC 20515

The Honorable Lacy Clay
Ranking Member, Subcommittee on Financial Institutions and Consumer Credit
U.S. House Financial Services Committee
2428 Rayburn House Office Building
Washington, DC 20515

RE: November 29, 2017 Joint Hearing Entitled "Legislative Proposals to Counter Terrorism and Illicit Finance"

Dear Chairmen Pearce and Luetkemeyer and Ranking Members Perlmutter and Clay,

Thank you for holding the recent hearing on "Legislative Proposals to Counter Terrorism and Illicit Finance". We would like to offer comments for the record regarding the discussion draft of the "Counter Terrorism and Illicit Finance Act",[1] and more specifically regarding its Section 9: "Transparent Incorporation Practices". We urge your sub-committees to preserve the strong definition of "beneficial owners" adopted in that draft, and at the same time to strengthen the bill in order to make it more effective to fight financial crimes.

Oxfam is a global organization working to end the injustice of poverty. We work with poor communities in over 90 countries to help them build better futures for themselves, stand up for their rights, and save lives in disasters.

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[1] U.S. House. 115th Congress, 1st Session. *H.R.____, Counter Terrorism and Illicit Finance Act: Discussion Draft dated November 14, 2017.* https://financialservices.house.gov/uploadedfiles/bills-115hr-pih-ctifa.pdf.

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Based on decades of experience in international development, we have concluded that incorporation transparency is essential to alleviate poverty in the world. Corruption, tax evasion, arms trafficking, and human trafficking are scourges that afflict developing countries. These crimes have in common the fact that the trail of investigations into them often ends with anonymous shell companies.

Corruption is one of the principal barriers to economic development and poverty alleviation.[2] Not only does it waste public resources that could otherwise fund schools, clinics and other social services, but it also discourages private investment, and fosters distrust between citizens and their government, which makes countries ungovernable and prone to civil strife.

Almost a third of rich Africans' wealth – about $500 billion – is estimated to be held offshore, much of it undeclared, which may cost African governments $14 billion a year.[3] That is equivalent to the sums needed to pay for healthcare to save the lives of 4 million children and to employ teachers and allow every African child to go to school.

At least $2.2 billion worth of arms and ammunition was illegally imported by countries under arms embargoes between 2000 and 2010,[4] fueling civil wars that destroy lives and livelihoods and set countries decades backward on their development paths.

Oxfam has documented the horrific stories of migrants fleeing war zones only to fall prey to human traffickers.[5] Anonymous companies from Kansas, Missouri and Ohio were instrumental to trick victims from overseas in a $6 million human trafficking scheme.[6]

The United States is a prime location for anonymous companies, providing them with a veneer of respectability as well as access to a deep financial system and strong rule of law. At their Summit in Lough Erne (United Kingdom) in 2013, G8 members including the United States committed to make progress to ensure that both tax and law enforcement authorities in all countries where companies operate are able to find out who really owns them. It is high time to fulfil that commitment.

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[2] Transparency International, "Corruption: Cost for Developing Countries", http://www.transparency.org.uk/corruption/corruption-statistics/corruption-cost-for-developing-countries/#.WiheslWnHcs

[3] Oxfam, "Paradise Papers: The Hidden Costs of Tax Dodging", https://www.oxfam.org/en/even-it/paradise-papers-hidden-costs-tax-dodging

[4] Oxfam, "Saving Lives with Common Sense", https://www.oxfamamerica.org/explore/research-publications/saving-lives-with-common-sense/

[5] Oxfam, "You Aren't Human Anymore", https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/mb-migrants-libya-europe-090817-en.pdf

[6] Global Witness, "The Great Rip-Off", http://greatripoffmap.globalwitness.org/#!/case/57938

We therefore applaud the Sub-Committees' initiative to address the issue of anonymous shell companies by requiring the collection of beneficial ownership information for law enforcement authorities.

We urge the sub-committees to strengthen the draft to ensure that the legislation will be truly effective for law enforcement authorities to fight the scourges of corruption, tax evasion, arms trafficking and human trafficking both in the United States and abroad. That means the bill should:

1. Ensure that foreign law enforcement has access to beneficial ownership information so that it can be used in criminal and civil prosecutions.

2. Require foreign nationals to file their beneficial ownership information with FinCEN, including submitting a scanned copy of the relevant pages of their non-expired passport to FinCEN and define the term "applicant."

3. Add an enforcement mechanism to the discussion draft. This could be done by making the state incorporation process dependent on beneficial ownership information being provided to FinCEN. It could potentially be done by ensuring FinCEN has the authority to regulate in this area in order to have current listings from the states about all of the corporations and LLCs that are active.

4. Ensure that domestic law enforcement has access, including federal, state, tribal, and local, to the Financial Crime Enforcement Network's (FinCEN) database of beneficial ownership information. This shouldn't require a subpoena.

5. Allow identification for beneficial owners to include non-expired state issued identification to meet the requirement if they do not have a non-expired U.S. driver's license or passport.

At the same time, we urge the sub-committees to preserve the strong definition of "beneficial owners" adopted in the discussion draft.

We thank you for your attention and your commitment to international development. If you would like more information, please contact Linda Delgado at linda.delgado@oxfam.org.

Sincerely,

Abby Maxman, CEO
Oxfam America

December 6, 2017

Chairman Steve Pearce
Ranking Member Ed Perlmutter
United States House of Representatives Committee on Financial Services
Subcommittee on Terrorism and Illicit Finance
2129 Rayburn House Office Building
Washington, D.C. 20515

RE: Beneficial Ownership

Dear Chairman Pearce and Ranking Member Perlmutter:

As a leading representative of the 28 million small businesses in America, Small Business Majority writes to thank you for this opportunity to comment on the discussion draft of the Counter Terrorism and Illicit Finance Act. We offer our appreciation for the recent hearing on updating our anti-money laundering laws and, in particular, the recognition of the significant challenges anonymous shell companies present for small business.

Small Business Majority was founded and is run by small business owners to ensure America's entrepreneurs are a key part of an inclusive, equitable and diverse economy. We actively engage our network of more than 55,000 small business owners in support of public policy solutions and deliver information and resources to entrepreneurs that promote small business growth.

As we have noted in the past, shell companies with hidden owners unfairly compete for contracts, they undermine our supply chains, can create difficulties in finding responsible subcontractors, and provide cover for fraudsters. They also provide cover for patent trolls that disproportionately target small and medium sized businesses, and cost businesses upwards of $29 billion in 2011 alone according to a study by Boston University Law School.

In previous letters, we have listed specific examples of anonymous companies used to undermine small business operations including the misappropriation of government contracts set aside for small businesses and individuals using anonymity to falsely bill subcontractors, among others.

We greatly appreciate the commitment of Chairman Pearce to this issue and his statements during a February oversight hearing when he explained how drug cartels have been moving money across the border using anonymously owned trucking companies and weakening the local economy in his home county in New Mexico.

These continuing problems are why we are pleased to submit this letter supporting legislation that includes collection of basic information on beneficial ownership. For our members, providing the name, address and identification of the true owner of a business is not a burden. They are well aware of who controls and who benefits from their proceeds. The definition in the discussion draft is clear, easy to follow, and workable for small businesses who have no need to hide their owners' identity.

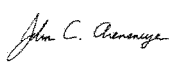
Further, knowing that the businesses we work with have given this information provides assurance that a real person is behind any contract we sign or bid or we compete against. The beneficial ownership provisions also reduce uncertainty and potential liability when dealing with suppliers and

subcontractors. While the benefits are significant, the costs of providing a name and address are minimal, on a par with obtaining a library card.

We also appreciate the current language in the bill that protects small business owners from inadvertently running afoul of the law by ensuring that any violation needs to be an intentional violation. We urge you to keep that language as written.

Thank you for consideration of our views and we look forward to working with you on this important legislation. For any questions or additional information, please contact Mohammad Ali, Director of Policy and Government Affairs.

Sincerely,



John Arensmeyer
Founder and CEO, Small Business Majority

CC:

The Honorable Jeb Hensarling The Honorable Carolyn Maloney

The Honorable Maxine Waters The Honorable Peter King

December 6, 2017

The Honorable Steve Pearce
Chairman, Subcommittee on Terrorism and Illicit Finance
U.S. House Financial Services Committee
2432 Rayburn House Office Building
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Chairman, Subcommittee on Financial Institutions and Consumer Credit
U.S. House Financial Services Committee
2230 Rayburn House Office Building
Washington, DC 20515

The Honorable Ed Perlmutter
Ranking Member, Subcommittee on Terrorism and Illicit Finance
U.S. House Financial Services Committee
1410 Longworth House Office Building
Washington, DC 20515

The Honorable Lacy Clay
Ranking Member, Subcommittee on Financial Institutions and Consumer Credit
U.S. House Financial Services Committee
2428 Rayburn House Office Building
Washington, DC 20515

RE: November 29, 2017 Joint Hearing Entitled "Legislative Proposals to Counter Terrorism and Illicit Finance"

Dear Chairmen Pearce and Luetkemeyer and Ranking Members Perlmutter and Clay,

We write on behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition to thank the Committee members for holding the recent hearing on "Legislative Proposals to Counter Terrorism and Illicit Finance." We were specifically appreciative of the recognition by all the expert witnesses of the threats posed by anonymous shell companies and the need to collect and make available to law enforcement beneficial ownership information.

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations working to combat the harmful impacts of corrupt financial practices.[1]

These comments focus on Section 9 of the discussion draft of the "Counter Terrorism and Illicit Finance Act."[2]

Anonymous shell companies have been shown to represent an important nexus of corruption, money laundering, transnational organized crime, and terrorism, all of which directly harm U.S. foreign policy interests. Such companies have been used to divert U.S. security and overseas development funds from their intended purposes into the hands of those who seek to do the United States harm, and they can help fund the very insurgents and terrorists U.S. troops are fighting.

[1] For a list of FACT Coalition members, visit https://thefactcoalition.org/about/coalition-members-and-supporters/.

[2] U.S. House. 115th Congress, 1st Session. *H.R.____, Counter Terrorism and Illicit Finance Act: Discussion Draft dated November 14, 2017.* https://financialservices.house.gov/uploadedfiles/bills-115hr-pih-ctifa.pdf.

In addition, anonymous companies are the vehicle of choice to move dirty money for human trafficking operations, drug cartels, and tax evaders. As has been noted by Chairman Pearce, these shell companies disrupt local business and economies.[3] Anonymous companies used to purchase real estate have been implicated in distorting housing markets, hollowing out neighborhoods, hurting local businesses, and pushing families to live farther away from their jobs.

This is a very important issue and the cost of inaction is high. Thankfully, it is an issue that continues to enjoy bipartisan support.

Notable Changes Needed to the Discussion Draft

Regarding the discussion draft, we support the full testimony presented by Stefanie Ostfeld of Global Witness, a member of the FACT Coalition, at the November 29th hearing.[4] Of particular concern are issues in Section 9 of the discussion draft. As she noted:

1. Ensure that domestic law enforcement has access, including federal, state, tribal, and local, to the Financial Crime Enforcement Network's (FinCEN) database of beneficial ownership information. This shouldn't require a subpoena.
2. Ensure that foreign law enforcement has access to beneficial ownership information so that it can be used in criminal and civil prosecutions.
3. Require foreign nationals to file their beneficial ownership information with FinCEN, including submitting a scanned copy of the relevant pages of their non-expired passport to FinCEN and define the term "applicant."
4. Add an enforcement mechanism to the discussion draft. This could be done by making the state incorporation process dependent on beneficial ownership information being provided to FinCEN. It could potentially be done by ensuring FinCEN has the authority to regulate in this area in order to have current listings from the states about all of the corporations and LLCs that are active.
5. Allow identification for beneficial owners to include non-expired state issued identification to meet the requirement if they do not have a non-expired U.S. driver's license or passport.

Important Provisions to Keep in the Discussion Draft

Definition of Beneficial Owner

We strongly support the wording of the definition of "beneficial owner" in the discussion draft. This is of prime importance. The 2016 revelations in the Panama Papers drew a clear picture of the dangers of loopholes in the law. A single staff person working for the Panamanian law firm Mossack Fonseca served as the director of more than 10,000 companies.[5] Her ability to serve as the legal contact for the

[3] U.S. House. Committee on Financial Services. *Legislative Proposals to Counter Terrorism and Illicit Finance: Testimony before the Subcommittees on Financial Institutions and Consumer Credit and Terrorism and Illicit Finance*, 115th Cong. (2017) (Statement of Stefanie Ostfeld, Deputy Head of U.S. Office, Global Witness), https://financialservices.house.gov/uploadedfiles/hhrg-115-ba15-wstate-sostfeld-20171129.pdf.

[4] U.S. House. Committee on Financial Services. *Meeting to approve the Authorization and Oversight Plan of the Committee on Financial Services for the 115th Congress* Hearing, 7 February 2017 (Statement of Rep. Steven Pearce), https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=401456.

[5] Tim Johnson, "Did this Panama Papers housekeeper really direct a North Korean arms deal?" McClatchy, May 10,

corporations demonstrates the lack of accountability if the law allows managers or other stand-ins to be named on behalf of the true, natural person(s) who own and control the company.

For these reasons, we continue to voice concerns about the definition in the Customer Due Diligence rule issued last year by the U.S. Department of the Treasury.[6] Prong one of the definition only requires identification of beneficial owners with a 25 percent or greater ownership interest; if no person meets this threshold, no one is named. This means that bad actors need only find four strawmen to avoid disclosures. Prong two allows for the identification of a manager. Managers may exercise day-to-day control over a business, but it is the beneficial owners who can ultimately control the business. Managers can be fired; beneficial owners cannot.

Also of concern is the use of the "responsible party" definition for the IRS Form SS-4. A responsible party is someone who can answer questions about the tax return. It does not require that the person be the beneficial owner of the company.

Neither of the above definitions ensures that the true, human owner will be listed. Incorporating either of those definitions into Section 9 of the "Counter Terrorism and Illicit Finance Act" would render this effort into little more than an administrative exercise.

The definition of beneficial owner in the discussion draft is strong and meaningful. The information will prevent bad actors from hiding behind a veil of corporate secrecy. The definition has been slightly modified from that in the bipartisan Corporate Transparency Act of 2017 (H.R.3089). While the definition in H.R.3089 is preferable, the updated definition in the discussion draft is a comprehensive definition that maintains the integrity of the information.

The definition of beneficial ownership, as it is written in the discussion draft, is also clear and easy to follow according to business owners. Small businesses are small; they already know who their owners are because they are mostly running the businesses themselves. Larger businesses have been exempted because (1) they are already subject to reporting requirements, as in the case of publicly-traded companies, or (2) they are large enough to have actual business operations and are at lower risk of abuse. The bill is designed to address paper, fly-by-night companies that form on Monday and launder money through bank accounts on Tuesday.

Small Business Majority and Main Street Alliance have both sent letters extending their support for the collection of this information and noting that their member businesses see no problems with compliance. In fact, both organizations explain the dangers posed by anonymous companies in terms of unfair competition, subcontractor fraud, and the security of knowing who is doing business in your community. According to their letters, small businesses do not have complex ownership structures.

There are no examples or evidence to suggest that the definition of beneficial owner is unworkable. To the extent that there were legitimate concerns raised by the business community, reasonable

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2016, http://www.mcclatchydc.com/news/nation-world/national/article76635047.html.

[6] Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29397 (May 11, 2016). *Federal Register: The Daily Journal of the United States*. Web. 5 Dec 2017 (accessible at https://www.federalregister.gov/d/2016-10567).

accommodations have been made during a decade of debate over this measure. As mentioned above, anyone owning more than 5 percent of a publicly-traded company already files beneficial ownership information with the Securities and Exchange Commission. Those companies are exempt from the bill. Other accommodations have been made to focus this bill on the shell companies that are used to launder illicit finance.

Intentionality

Additionally, the discussion draft appropriately ensures that only an intentional violation will trigger a penalty. The draft limits liability to those who "knowingly" provide false information or "willfully" fail to provide information. Both terms are well understood in case law and will prevent those with no intent to violate the law from facing any unwarranted penalties. Those are proper guardrails and should be kept in the bill.

Updating Information

Concerns about the 60-day requirement to update the information are misplaced. The businesses covered by this bill are not complex enterprises; they know their owners and they know when ownership changes. The types of ownership changes that this critique contemplates occur in large, complex enterprises, not in the companies covered in the legislation.

We appreciate your consideration of our views and look forward to working with you on this legislation. For questions or additional information, please contact Clark Gascoigne at cgascoigne@thefactcoalition.org or +1 (202) 810-1334.

Sincerely,

Gary Kalman
Executive Director
The FACT Coalition

Clark Gascoigne
Deputy Director
The FACT Coalition

cc The Honorable Jeb Hensarling, Chairman, U.S. House Financial Services Committee
The Honorable Maxine Waters, Ranking Member, U.S. House Financial Services Committee

Jubilee USA NETWORK

212 East Capitol St NE
Washington, DC 20003

Tel: (202) 783-3566
jubileeusa.org

December 6, 2017

Re: The Counter Terrorism and Illicit Finance Act Draft

Dear Dear Chairman Pearce, Ranking Member Perlmutter, Chairman Hensarling and Ranking Member Waters:

We thank you for holding the hearing on "Legislative Proposals to Counter Terrorism and Illicit Finance." On behalf of Jubilee USA Network, I would like to offer some thoughts and concerns on the Counter Terrorism and Illicit Finance Act draft. Jubilee USA Network is a religious development organization allied with more than 700 national and local faith groups. We are concerned with how financial secrecy, corruption and tax evasion are connected to poverty in the United States and abroad.

In particular, some anonymous shell companies have facilitated exploitation of vulnerable communities and supported corrupt regimes in the developing world. Shell companies contribute to an estimated one trillion dollars leaving the developing world annually through tax evasion and corruption.

In the U.S., we can prevent anonymous companies from exploiting vulnerable communities. We can also prevent money from being illicitly siphoned from the developing world.

The Counter Terrorism and Illicit Finance Act draft, takes important steps toward ending abuses of anonymous companies. Implementing effective transparency measures will make it easier for law enforcement to prevent illegal activity and stop activities that exploit the poor. Increasing corporate transparency will reduce the flow of corrupt or illegal money. Reducing corrupt behavior helps provide vulnerable populations with the means to access resources for building schools, hospitals, and the infrastructure necessary for development. Additionally, the collection of beneficial ownership information will make it harder for those stealing from the most vulnerable to use the United States financial system as a safe haven to hide their money.

While we applaud the inclusion of beneficial ownership provisions in the bill, the Committee should make certain changes ensuring that the legislation effectively combats the dangers of anonymous companies. We must see a strong definition of beneficial ownership and ensure there is adequate access to information collected to prevent corrupt, illegal and exploitative activities.

I urge you to keep the definition as written regarding those who control the entity. It is a clear and comprehensive definition that avoids the pitfalls of other definitions that attempted to gather this information allowing for managers, directors or other stand-ins for the true owner(s). The 2016 release of the Panama Papers was instructive in this regard. Due to lax rules around corporate ownership information, a single employee at the Panamanian law firm, Mossack Fonseca, served as the named entity for approximately 20,000 companies. She had little-to-no knowledge of the beneficial owners of those 20,000 companies. If we are updating our laws, we must not repeat that mistake and therefore need to keep the clear and comprehensive definition as written.

Another area in the draft of concern is the limited access to information gathered. State and local law enforcement do not have direct access and yet most investigations into illegal activity are performed by state and local officials in the United States. This omission undermines the reforms and must be remedied as the process moves forward. The restriction of access by foreign law enforcement officials is another concern.

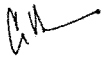
The draft also limits access by law enforcement to criminal subpoenas. Financial institutions, whom we engage in anti-money laundering activity, would have appropriate access by simple request. Law enforcement should have ready access to this information at all stages of the investigative process. Not all financial crimes are criminal offenses but they may still pose threats to our communities which is why the bill should include civil and administrative subpoenas.

It is concerning that foreign nationals looking to establish a U.S. company do not have the same requirements as U.S. citizens to disclose ownership information. This administrative loophole needs to be closed.

In addition to the issues I shared, at Jubilee USA we concur with the recommendations included in the written testimony of Stefanie Ostfeld from Global Witness.

Thank you for your consideration. We are happy to answer any questions you may have and look forward to working with you on enacting these important reforms.

Sincerely,



Eric LeCompte
Executive Director
cc Rep. Maloney and Rep. King

Coalition for Integrity

December 6, 2017

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. ___, the "Counter Terrorism and Illicit Finance Act" and Recommendations Regarding Section 9 ("Transparent Incorporation Practices").

Dear Chairman Hensarling and Ranking Member Waters:

The Coalition for Integrity is a non-profit, non-partisan organization dedicated to strengthening accountability and transparency and combating corruption in the United States and internationally. We work in coalition with a wide range of individuals and organizations to promote integrity in the public and private sectors.

We commend the Committee on Financial Services' interest in requiring transparency of the beneficial owners of companies and strengthening U.S. anti-money laundering laws to counter terrorism and illicit finance. Beneficial ownership transparency is also crucial to end safe havens for kleptocrats and their stolen assets.

It is common for money launderers and criminals trying to send or receive funds or assets, while concealing their involvement in bribery and other crimes, to hide their identities behind complex webs of shell companies. Once the shell company is formed, it can easily open one or more bank accounts, wire money, buy property and engage in activities that launder the tainted funds. The World Bank calls the U.S.one of the preeminent providers of corporate vehicles, including anonymous shell companies. The state of Delaware, known for its user-friendly incorporation rules, is home to thousands of anonymous shell companies. Nevada and Wyoming aren't far behind. In fact, it is possible anywhere in the U.S. to set up a company without naming the true beneficial owner. Anonymous companies allow corrupt politicians and organized crime to transfer and hide illicitly acquired funds worldwide, and fuel an abuse of power and a culture of impunity, and endanger U.S. national security interests.

To achieve its objective of preventing terrorist finance and other forms of illicit money from entering the U.S., we respectfully request that the Committee's draft legislative proposal include the following recommendations:

1. Beneficial Ownership Definition.

   We support the strong definition of beneficial ownership currently contained in the proposal. It is important to not conflate senior management with the beneficial owner. Often officials named in leadership positions for corporate entities are figureheads and control of the entity is exercised through other means. The current definition captures people who do not have legal ownership but ultimately control the entity behind the scenes and it is important that it is retained in the final version of the bill.

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2. Access to Beneficial Ownership Database by Law Enforcement.

a. It is crucial that federal, state, and local law enforcement have complete access to the beneficial ownership database and that access does not require a subpoena.
Law enforcement may require company ownership information to support a wide range of criminal and civil investigations, including securities fraud, business misconduct, health care fraud, human trafficking, drug trafficking, etc., and therefore it is crucial for domestic law enforcement to have access to beneficial ownership information.

b. Foreign law enforcement should also have access to beneficial ownership transparency information to be used in criminal and civil prosecutions.
Every large international corruption story in recent times, including IMDB, Petrobras, FIFA, and VimpelCom, has featured anonymous companies. It is therefore important that any legislation to counter illicit finance support foreign governments' access to beneficial ownership information.

3. Financial institutions should implement the Customer Due-Diligence Rule on schedule in May 2018.

Financial institutions have a crucial role to play as the first line of defense against the transfer of corrupt funds. Requiring financial institutions to obtain and verify beneficial ownership information for account holders is critical to keep the proceeds of corruption and other crimes from being laundered through the U.S. financial system. In May 2016, the U.S. Department of the Treasury issued final rules under the Bank Secrecy Act (BSA) to clarify and strengthen customer due diligence (CDD) requirements for covered financial institutions and created a new separate requirement to identify the beneficial owners of legal entity customers. Treasury also provided financial institutions two years (until May 11th, 2018) to update their policies, procedures and implement their new processes.

Regardless of how long Financial Crimes Enforcement Network (FinCEN) has to set up an entirely new database of beneficial ownership information, financial institutions need to know their customers and they have already been working to put the necessary procedures in place to comply with the CDD rule for the last 18 months, therefore the Committee should not issue any requirement that suspends the CDD regulations from going into force in May 2018.

4. Requirement for foreign nationals to file with FinCEN their beneficial ownership in connection with company formation.

The discussion draft does not appear to require applicants that form entities to submit beneficial ownership information to FinCEN if they don't have an unexpired U.S. passport or U.S. drivers' license, thus favoring foreign owners over U.S. applicants. Both foreign owners and U.S. owners should be required to file beneficial ownership information with FinCEN.

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5. Enforcement of the beneficial ownership disclosure requirement.

   It is important that FinCEN has mechanisms in place to ensure that the bill under discussion is enforced. The application to form a legal entity should not be valid until the necessary beneficial ownership information has been received by FinCEN.

6. Extending anti-money laundering program requirements to gatekeepers.

   The proposal could be strengthened by requiring lawyers who carry out real estate transactions for their clients or serve as company service providers to conduct due diligence and screenings of their clients and to alert the authorities to suspicious transactions. Similarly, the real estate industry should carry out background checks to determine where the money used to purchase luxury property comes from and to conduct adequate due diligence. Congress should lift the "temporary" exemption created in 2002 that excuses certain categories of persons from complying with the 2001 law requiring them to establish anti-money laundering programs, including "persons involved in real estate closings and settlements." A deadline should be established to bring everyone into compliance with the law, which is now 16 years old. As a part of this effort, the Treasury Department should also require disclosure of the beneficial owners who ultimately own companies purchasing real estate throughout the U.S.

We ask that you please consider our comments as you discuss the "Legislative Proposals to Counter Terrorism and Illicit Finance".

Over the years, the United States has committed to implementing beneficial ownership transparency in a number of different fora. Robust rules requiring transparency of beneficial ownership of companies would send a strong signal that the U.S. is taking the necessary steps to uphold its commitments. We thank you in advance for your continued action to ensure a strong and effective rule.

Sincerely,

Shruti Shah

Shruti Shah
Vice President
Programs and Operations

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A project of the New Venture Fund

The Honorable Steve Pearce
Chairman, Subcommittee on Terrorism and Illicit Finance
U.S. House Financial Services Committee
2432 Rayburn House Office Building
Washington, DC 20515

The Honorable Ed Perlmutter
Ranking Member, Subcommittee on Terrorism and Illicit Finance
U.S. House Financial Services Committee
1410 Longworth House Office Building
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Chairman, Subcommittee on Financial Institutions and Consumer Credit
U.S. House Financial Services Committee
2230 Rayburn House Office Building
Washington, DC 20515

The Honorable Lacy Clay
Ranking Member, Subcommittee on Financial Institutions and Consumer Credit
U.S. House Financial Services Committee
2428 Rayburn House Office Building
Washington, DC 20515

RE: November 29, 2017 Joint Hearing Entitled "Legislative Proposals to Counter Terrorism and Illicit Finance"

Dear Chairmen Pearce and Luetkemeyer and Ranking Members Perlmutter and Clay,

We write on behalf of the Enough Project to thank the Committee members for their recent hearing titled "Legislative Proposals to Counter Terrorism and Illicit Finance." We appreciated how the panel of experts outlined the threat posed by anonymous shell companies and the need to collect and make available to law enforcement beneficial ownership information.

The Enough Project supports peace and an end to mass atrocities in Africa's deadliest conflict zones. Together with its investigative initiative The Sentry, Enough counters armed groups, violent kleptocratic regimes, and their commercial partners that are sustained and enriched by corruption, criminal activity, and the trafficking of natural resources. Enough seeks to build leverage in support of peace and good governance and conducts research in conflict zones, engages governments and the private sector on potential policy solutions, and mobilizes public campaigns focused on peace, human rights, and breaking the links between war and illicit profit, helping create consequences for the major perpetrators and facilitators of atrocities and corruption.

In East and Central Africa, key officials responsible for ongoing conflict and atrocities reap significant financial benefits from their business dealings in multiple economic sectors and through work with facilitators and enablers within the region and across the globe, many of whom use anonymous shell companies. These officials work through interconnected business networks involving dozens of

companies, in some instances, they, their family members, and busine
and owners.

In other cases, they rely on anonymous shell companies; these companies and their business sectors operate largely in the U.S. dollar, which provides the U.S. government with jurisdiction over many of the transactions and enabling action on issues such as anonymous shell companies. The United States possess leverage against those who commit atrocities, and should act and have a direct impact through anti-money laundering measures. We believe clear and strong legislation is needed.

Additionally, we support the wording of the definition of "beneficial owner" in the discussion draft as it is robust and meaningful. The information will prevent bad actors from hiding behind a veil of corporate secrecy. The definition has been slightly modified from that in the bipartisan Corporate Transparency Act of 2017 (H.R.3089). While the definition in H.R.3089 is preferable, the updated definition in the discussion draft is a comprehensive definition that maintains the integrity of the information.

Regarding the discussion draft, we want to highlight a few elements from the testimony presented by Stefanie Ostfeld of Global Witness that we support and believe are important:

1. Ensuring that domestic law enforcement has access, including federal, state, tribal, and local, to the Financial Crime Enforcement Network's (FinCEN) database of beneficial ownership information. This shouldn't require a subpoena.

2. Ensuring that foreign law enforcement has access to beneficial ownership information so that it can be used in criminal and civil prosecutions.

3. Requiring foreign nationals to file their beneficial ownership information with FinCEN, including submitting a scanned copy of the relevant pages of their non-expired passport to FinCEN and define the term "applicant."

4. Adding an enforcement mechanism to the discussion draft. This could be done by making the state incorporation process dependent on beneficial ownership information being provided to FinCEN. It could potentially be done by ensuring FinCEN has the authority to regulate in this area in order to have current listings from the states about all of the corporations and LLCs that are active.

5. Allowing identification for beneficial owners to include non-expired state issued identification to meet the requirement if they do not have a non-expired U.S. driver's license or passport.

We appreciate your consideration of our views and look forward to working with you on this legislation. For questions or additional information, please contact Ian Schwab at Ischwab@enoughproject.org.

Sincerely,

Ian Schwab
Director of Advocacy and Impact Strategy,
The Enough Project

cc The Honorable Jeb Hensarling, Chairman, U.S. House Financial Services Committee
The Honorable Maxine Waters, Ranking Member, U.S. House Financial Services Comm

INTERNATIONAL CORPORATE
ACCOUNTABILITY ROUNDTABLE

December 12, 2017

The Honorable Steve Pearce
Chairman, Subcommittee on Terrorism and Illicit Finance
U.S. House Financial Services Committee
2432 Rayburn House Office Building
Washington, DC 20515

The Honorable Ed Perlmutter
Ranking Member, Subcommittee on Terrorism and Illicit Finance
U.S. House Financial Services Committee
1410 Longworth House Office Building
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Chairman, Subcommittee on Financial Institutions and Consumer Credit
U.S. House Financial Services Committee
2230 Rayburn House Office Building
Washington, DC 20515

The Honorable Lacy Clay
Ranking Member, Subcommittee on Financial Institutions and Consumer Credit
U.S. House Financial Services Committee
2428 Rayburn House Office Building
Washington, DC 20515

Re: House Financial Services Subcommittee on Terrorism and Illicit Finance and Subcommittee on Financial Institutions and Consumer Credit, Joint Hearing Entitled "Legislative Proposals to Counter Terrorism and Illicit Finance," November 29, 2017

Dear Chairmen Pearce and Luetkemeyer and Ranking Members Perlmutter and Clay:

The International Corporate Accountability Roundtable (ICAR) is a civil society organization that believes in the need for an economy that respects the rights of all people, not just powerful corporations. We welcome the November 29 hearing on "Legislative Proposals to Counter Terrorism and Illicit Finance" and the Committee's interest in tackling money laundering and mandating transparency regarding the beneficial owners of American companies.

The lack of transparency in corporate structures and ownership can lead to real and significant human rights impacts. For example, individuals and multinational corporations use anonymous companies to avoid paying their fair share in taxes, robbing governments of income for essential services such as health, infrastructure, and education. As United Nations Independent Expert Juan Pablo Bohoslavky[1] said upon release of the Paradise Papers, such corporate tax abuse "undermines social justice and human rights worldwide."[2]

Corporate secrecy around beneficial ownership has allowed human traffickers to operate front businesses and profit from human rights abuses with impunity. For example, research conducted by Polaris found that there are over 6,500 illicit massage businesses operating in the United States, and that human trafficking has occurred in many of these businesses in Tampa, Honolulu, Houston, San Francisco, Albany, Columbus, Oklahoma City, and Fairfax County, VA. However, as no U.S. states require corporations to disclose their beneficial owner, it is extremely difficult to identify and hold accountable the criminals who are controlling or profiting from human trafficking by using the massage parlors as a disguise.[3]

Ultimately, anonymous companies undermine the ability of governments, including the United States, to enforce laws, provide essential public services, and reduce poverty. The ability to know the true persons behind legal entities enables the law enforcement to more effectively investigate and prosecute those who break laws such as tax evasion, money laundering, and human trafficking.

We therefore welcome the draft legislative proposal entitled "Counter Terrorism and Illicit Finance Act." We particularly commend the Committee on the strong definition of beneficial owner. By specifying that the term "beneficial owner" applies to natural persons, this bill allows for the true identity of an entity's owner to be uncovered and will reduce the ability for wrongdoers to hide behind corporate secrecy.

To further strengthen the draft legislation and ensure that it can effectively achieve the intended results, we encourage the Committee to implement the following recommendations, which were highlighted in the testimony presented by Stefanie Ostfeld of Global Witness, a member of ICAR, at the November 29th hearing.[4]

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[1] Juan Pablo Bohoslavky is the United Nations Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights.

[2] United Nations Human Rights Office of the High Commissioner, *Paradise Papers: State must act against "abusive tax conduct of corporations – UN human rights experts*, Nov. 9, 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22377&LangID=E.

[3] Polaris, Business Transparency to Combat Human Trafficking, https://thefactcoalition.org/wp-content/uploads/2017/08/Polaris-Anonymous-Companies-Fact-Sheet-10-17-2016-FINAL.pdf (last visited Dec. 11, 2017).

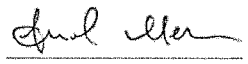
[4] *Hearing on A Legislative Proposal to Counter Terrorism and Illicit Finance Before the House Subcomm. on Fin. Services on Terrorism and Illicit Fin. and Subcomm. on Fin. Institutions and Consumer Credit*, 115th Congress (2017)

Specifically, the "Counter Terrorism and Illicit Finance Act" should:

1. Ensure that domestic law enforcement has access, including federal, state, tribal, and local, to the Financial Crime Enforcement Network's (FinCEN) database of beneficial ownership information. This should not require a subpoena.
2. Ensure that foreign law enforcement has access to beneficial ownership information so that it can be used in both criminal prosecutions and administrative actions.
3. Require foreign nationals to file their beneficial ownership information with FinCEN, including submitting a scanned copy of the relevant pages of their non-expired passport to FinCEN.
4. Add an enforcement mechanism to the draft legislation. This could be done by requiring that beneficial ownership information be disclosed to FinCEN prior to being able to incorporate under state law. More specifically, FinCEN should be provided authority to regulate on matters related to beneficial ownership.
5. Allow beneficial ownership identification to include non-expired state issued identification documents, in addition to a U.S. driver's license or passport.

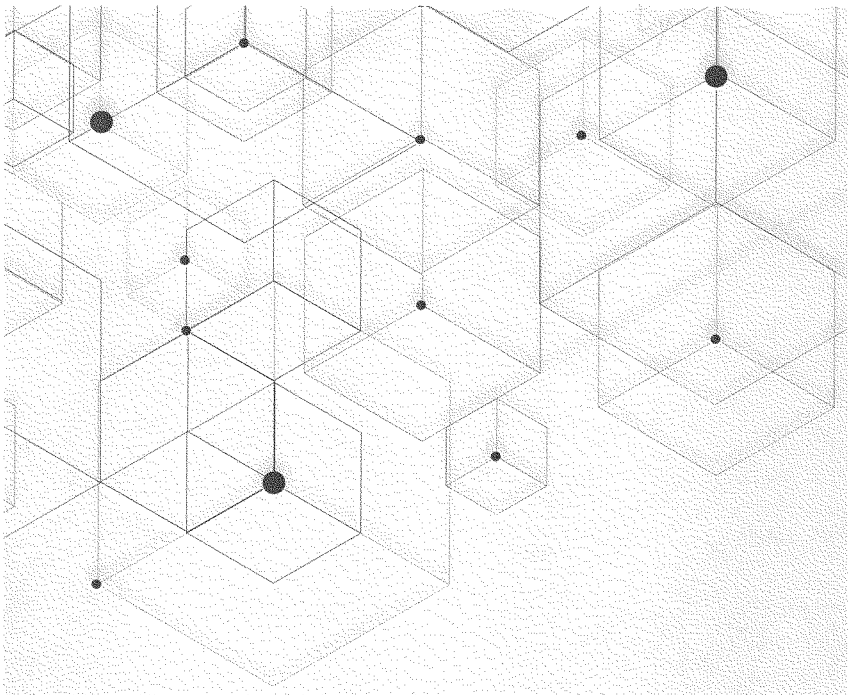
We are thankful for your consideration and look to you to safeguard human rights by ensuring wrongdoers can no longer use the United States as a safe haven and hide behind anonymously held companies.

Sincerely,



Amol Mehra
Executive Director
International Corporate Accountability Roundtable

(testimony of Stefanie Ostfeld, Deupty Head of U.S. Office, Global Witness), *available at* https://financialservices.house.gov/uploadedfiles/hhrg-115-ba15-wstate-sostfeld-20171129.pdf.



The Way Forward:

The Financial Sector Addresses the 2018 Implementation of FinCEN's CDD Final Rule

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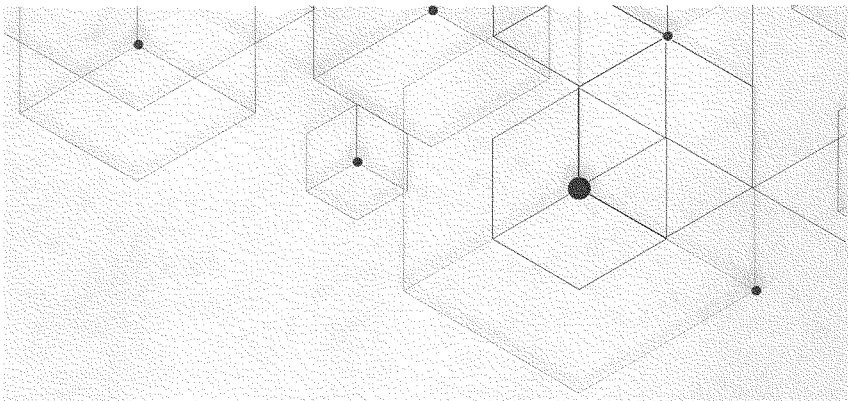

Introduction

On June 19, 2017, approximately 100 BSA/AML compliance professionals from the financial community attended ACAMS' day-long conference, "Mastering the CDD Final Rule—A Roadmap to Successful Implementation." Held in Washington, D.C., attendees represented financial institutions from across the country, ranging in size from community organizations to multi-national banks. The focus of the meeting was FinCEN's Customer Due Diligence (CDD) Requirements for Financial Institutions, published on May 11, 2016 and commonly referred to as the CDD Final Rule. The rule must be implemented by May 2018 and is intended to strengthen and clarify CDD requirements for covered financial institutions.

The bulk of the event involved roundtable-style working groups of roughly 10 members, each led by a facilitator. To foster an open dialogue, the meeting was restricted to active AML specialists who work for financial institutions; no regulators or law enforcement personnel were present. (In addition, no attendee names appear in this paper.)

This report summarizes, by subject matter, the groups' wide-ranging discussions about issues they face in implementing the CDD Final Rule. Among the topics explored were what the rule actually requires of financial institutions; navigating potential regulatory gray areas; and fashioning action plans to operationalize the rule by the May 11, 2018 deadline. Practical issues such as staffing needs, technological support and the potential impact on customer relations were also debated.

These discussions—and this paper—should not be construed as regulatory guidance or legal advice. Nor should the ideas presented be necessarily seen as a "best practices" template applicable to any or all financial institutions.

Rather, this report is intended to simply share collective insights drawn from the day's discussions. We offer them in the hope it may benefit ACAMS members as they implement this transformative rule.

The 25% Solution: Setting Beneficial Ownership Collection Thresholds

The CDD Final Rule defines two prongs for which beneficial ownership information is collected: the ownership prong and the control prong. The control prong must identify at least one individual with significant managerial control of the entity. The beneficial ownership prong requires documenting individuals who, directly or indirectly, own 25% or more equity in a legal entity customer.

Attendee discussions largely focused on operationalizing the 25% beneficial ownership requirement while maintaining a positive customer experience, and possibly adopting stricter standards depending on risk profiles.

As examples, some attendees currently collect beneficial ownership information on all 25%+ owners, regardless of risk. Others make a risk-based decision on whether to obtain that information. Other banks currently do not collect this information.

Attendees articulated a wide variety of formulas and thresholds for collecting beneficial ownership

information, currently and in the future. Some use a 15% or 10% threshold with high-risk clients. Some use a 10% threshold regardless of risk rating. One institution intends to adopt a 5% threshold for high-risk clients once the rule is implemented.

Some attendees expressed concern of a potential competitive advantage that banks with a 25% threshold might hold over banks demanding greater scrutiny. That is, a client might forgo a bank with a 10% threshold over the less intrusive 25%.

There was also discussion as to whether institutions may attract regulatory attention and/or criticism if, for instance, it applies a 25% in all cases, or creates a staggered set of thresholds below 25%. The concern is that risk criteria for adopting lower thresholds could themselves be scrutinized or second-guessed.

Other attendees felt institutions with thresholds under 25% could create a de facto standard, leading examiners to view 25% as comparatively lax. Some attendees expressed frustration that examination guidance isn't yet published. What became clear throughout this dialogue is that some FI's are already being told by examiners to go below 25%, a position contrary to all public comments on the rule from the government.

Takeaways

- While the 25% threshold is in fact already widely observed, institutions are still grappling with criteria for collecting beneficial ownership at lower thresholds
- There is concern that collecting information on owners of less than 25% could diminish the customer experience and lead clients to exit an institution
- There was broad support for examination guidance to be published sooner, rather than just before the guidance is mandatory. As most expected to roll out new systems in the first quarter of 2018, much training is needed and the timeframe is imminent

Trigger Warnings: Managing Event-Based Account Reviews

The CDD Final Rule states that ongoing monitoring shall be conducted to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, including beneficial ownership. The updates would be in response to what are commonly called "trigger events." An example would be significant and unexplained changes in customer activity.

Attendees said properly responding to trigger events is a priority, but there was concern about burdensome volumes of them. Most institutions already have trigger events. The question is whether the rule could significantly increase the number of trigger events, straining management and monitoring resources.

There was some debate on how to define trigger events, as well as regulatory expectations regarding refreshment of beneficial ownership information. As examples, some institutions limit triggering primarily to new account opening. But gray areas remain. For instance, if a client adds a product or service, is that tantamount to opening a new account, and thus a trigger event, under the rule?

Others said it is important to differentiate refreshing data and updating risk profiles. A reasonable that belief ownership has changed might trigger a beneficial ownership review. A change in transactional activity, however, might be incorporated into an existing risk rating, though perhaps not require refreshing beneficial ownership.

Another issue concerned standardizing responses to trigger events. An example would be a suspicious activity report (SAR), which may or may not trigger a beneficial ownership review, depending on why it was filed.

There were multiple perspectives on managing periodic reviews, particularly on how frequently to conduct them. With many institutions, review frequency is tied to factors such as risk profile. One attendee's institution requires a regular know your customer (KYC) refresh for high-risk clients regardless of whether a trigger event occurs.

Takeaways

- Trigger events resulting from ongoing monitoring can help ensure beneficial ownership information is current, but institutions are concerned about an overabundance of them
- Attendees felt not all trigger events require refreshing beneficial ownership information but, rather, may be cause to investigate whether a risk profile should be updated
- Institutions should develop written policies and procedures for event-triggered updating, train bank personnel on them, and ensure staffing is sufficient to meet the demand

Getting On Board: The CDD Final Rule's Impact on Account Opening Practices

The CDD Final Rule is not retroactive. It applies to accounts opened after the May 2018 deadline. Covered financial institutions will be required to obtain, verify and record beneficial owners of legal entity customers.

However, some attendees are grappling with new-account regulatory framework.

One issue is the explicit requirement to maintain risk-based procedures to understand the nature and purpose of an account. Standardizing systems for determining this could be difficult, given the innumerable purposes for accounts. Some institutions plan to offer a drop-down menu of account description options, such as payroll, operations, etc. Others may ask clients for their North American Industry Classification System (NAICS) code, used by federal statistical agencies to classify business establishments.

Some said defining a new account may prove problematic. For instance, should a second account opened by an existing client be treated as new—and therefore require beneficial ownership collection? If a client adds a product or service, does this constitute a new account? Another issue is whether relying on previously collected information is acceptable. Some felt it was acceptable to rely on existing information if the beneficial owner or controlling person had an existing account. Others disagreed.

There was a similar divergence of views about account opening processes. Many attendees would not open accounts without determining beneficial ownership. Others, however, said they would consider a risk-based decision to permit opening an account, premised on there being a firm deadline—typically 30 to 60 days—for determining beneficial ownership.

> (NOTE: Guidance received from the Department of the Treasury, Financial Crimes Enforcement Network, dated 5/11/16 in the Federal Register, states: *'Because the risk-based verification procedures must contain the same elements as required by the applicable CIP rule to verify the identity of individual customers, verification must be completed within a reasonable time after the account is opened.'* Therefore, if under the written CIP rules at several financial institutions, a 30-day window (or other) may incorporate this requirement and permit account opening, and general transactions.)

Several group discussions centered on when, precisely, an account is considered open. With loans, for example, the issue might hinge on when it is approved versus when the funds are released. For business accounts, the question might be on when the account is created versus when deposits are first made.

Attendees also discussed establishing risk-based procedures to verify the identity of each beneficial owner "to the extent reasonable and practicable." There were split opinions on what that will mean in practice. One attendee's institution plans to verify by phone. The employees will attest they obtained the information, which the institution will consider a verification document.

Takeaways

- There is widespread agreement that principles of beneficial ownership collection for new accounts be documented in policies and procedures, but views differ on operational fine points such as relying on previously collected client information
- Approaches vary on opening accounts without full ownership identification and verification, with some financial institutions (FIs) allowing a window to subsequently collect the information
- Many attendees felt the definition of a new account can be a gray area, such as existing clients who open multiple accounts in the regular course of business.

A Heartbeat Away? Drilling Down, Certification and Appendix A

The CDD Final Rule will impact onboarding, but some attendees were unclear on how the new rule might affect client screening.

Virtually all attendees routinely conduct OFAC screening on beneficial owners, and that will continue under the new rule.

However, many do not routinely perform 314(a) screenings and attendees split on whether they would do so once the new rule takes effect. (Some said 314(a) screenings might take place in other contexts, such as part of risk-based reviews.)

Attendees expressed confusion about what the regulation requires in terms of reporting a 314(a) match with a beneficial owner.

At many tables, there were discussions of "drilling down" in cases where beneficial ownership could not be readily identified. Most attendees said they intend "to drill down to a heartbeat." However, some acknowledged that this could prove difficult in practice.

There was divergence among attendees on whether, and to what extent, banks could rely on representations made by the person opening the account, or whether they will be expected to investigate to find a "beating heart."

Others said drilling down efforts must be supported institutionally with formalized escalation processes. One approach might be to work in conjunction with existing AML steering committees, and institutions might consider creating a separate beneficial ownership escalation committee. Again, staffing is a realistic concern.

Views diverged on whether to collect information on intermediary entities while drilling down to natural persons. Some said yes, others no, and others said only with high-risk clients. A key component of drilling down is documenting investigative steps taken.

Views were mixed on whether to use the certification form attached to the rule's Appendix A. Some institutions will utilize it and others will create something in-house. Some FI's will ask the person opening the account to fill in Appendix A; others will complete it and ask the customer to certify the information. Some attendees are considering added information such as citizenship and possible PEP connections.

Takeaways

- OFAC screening is regularly conducted on beneficial owners, but 314(a) scans are less frequent, and there is some confusion about reporting 314(a) matches
- Institutions plan to drill down to "a beating heart" but some are uncertain how much they may rely on representations of the person opening the account and if/when they must investigate independently
- Appendix A will often be used, and sometimes integrated into internal systems, although others plan to create their own disclosure forms in-house

Tech Tools: Developing IT to Address New Systemic Needs

The CDD Final Rule creates new challenges in terms of technology and data management, which many attendees said are unresolved.

There was widespread agreement that vendors are generally not yet providing products tailored for the CDD Final Rule. While most attendees have automated processes to assist compliance workflow, they are still evaluating whether these systems can be adapted to ensure beneficial ownership information flows through filters such as screening for currency transaction reporting (CTR) aggregations and sanctions risks.

Several attendees are in the process of engaging with vendors, to jointly develop systems, timetables and budgets. But several said vendors do not seem to have a firm grasp of the rule and its requirements. The ultimate liability falls with the FI, so proper and intensive due diligence is a must. If you disagree with your vendor, you may have to ask them to change their process or handle the issue in another manner.

Many believe the process should begin with a gap analysis, to determine the performance of current systems versus the desired performance after the rule is implemented. This gap analysis, they said, will enable them to craft systems to better serve their needs, and identify expected costs and hiring needs.

There were varied approaches to how beneficial ownership data will be stored. For smaller institutions, it will often conform to current document management systems. However, as institutions increase in size, there was a greater likelihood of creating an internal data warehouse dedicated to beneficial ownership information. Some said managing that data may require revisiting policies on client privacy protection.

Takeaways

- Technology is crucial to successfully implementing the CDD Final Rule, but many vendors are not yet offering products specifically tailored to this regulation
- Institutions should consider conducting a gap analysis to identify the rule's expected impact on workflows and pinpoint expected costs such as staffing needs
- Data management plans include using existing document handling systems and dedicated internal warehouses, and client privacy protections are a concern.

Spread the Word: Conducting Training from the Front Line to the C-Suite

Attendees said one of their top challenges is generating awareness of the CDD Final Rule internally and incorporating it into the existing culture of compliance.

There was a consensus that buy-in by senior management is vital. This support should include funding for IT and staffing (see above.) Equally important, senior management must clearly signal that the rule is an enterprise-wide responsibility.

Many attendees have formed—or plan to form—implementation teams, comprising various internal constituencies and relevant third parties such as vendors. The goal, as one attendee put it, is to "socialize" the rule, or build broad awareness of it.

Some implementation teams might develop a decision tree, with clearly defined responsibilities and deadlines for each team member.

Effective staff training, attendees said, requires assessing the rule's impacts on specific lines of business (LOBs) because the impact will vary among units. This will allow for tailored training that addresses discrete risks of each LOB. Attendees plan to use computer-based training as well as targeted in-person sessions, particularly for senior management.

For front-line staff, most attendees plan a "train the trainer" approach, or training team leaders who then school fellow staffers.

One potential hurdle is that few standardized training materials are available at present. Some attendees plan to develop such materials internally; others may look for third-party instructors to ensure training deadlines are met.

A number of attendees said training for front-line workers should include explaining the rule itself and defining its obligations. Staff will also be trained to handle situations where information is either incomplete or inaccurate.

Many institutions will utilize scenario training, which simulates real-life cases and provides appropriate responses. As one attendee put it, however, there are almost certainly unknown scenarios that will arise post-implementation.

There was discussion, though no consensus, on whether to incentivize employees by methods such as making CDD Final Rule compliance a component of performance reviews, though some plan to reference the rule in job descriptions.

Due to the newness of the rule for both institutions and examiners, some attendees plan to regularly document and discuss their strategies with examiners. They will outline the steps they are taking, and the anticipated benefits. This documentation should enhance project analysis during implementation and potentially reveal systemic weaknesses.

Takeaways

- Compliance personnel must socialize the rule across the institution, but successful implementation requires buy-in from senior management and training front-line workers
- The newness of the rule calls for regularly communicating with examiners to ensure supervisory expectations and imperatives are addressed
- Training must be tailored for the unique needs of various business lines and the discrete risks of various products and services

Free and Clear? Tips on Managing Exclusions and Exemptions

The CDD Final Rule includes a number of exclusions and exemptions. Exclusions are for certain types of entities, such as regulated financial institutions and publicly traded companies. Trusts are also excluded (except for statutory trusts created by a filing with a secretary of state or similar office). Nonprofits that have filed organizational documents with appropriate state authorities are subject only to the control prong.

Certain types of accounts are exempted. An example is an account financing insurance premiums, where payments are remitted directly to an insurer or broker.

For attendees, a key issue, in some cases, is verifying eligibility.

In many cases, eligibility documentation will be provided by the client. Some institutions are developing drop-down options in new account applications that ask why the applicant is eligible. Opinions were mixed on requiring clients to certify eligibility on a form. Some felt exclusion forms should be required for new accounts. Some will make a risk-based decision.

Others said gray areas remain. For instance, equipment financing is exempted if it involves direct payment from the bank to the vendor or lessor. But "equipment" is not specifically defined; whether it applies to things such as automobiles used for business is unclear.

Takeaways

- Institutions should train staff on available exemptions and exclusions and incorporate eligibility determination into account opening processes
- Institutions must be aware of potential gray areas involving exemptions, such as transactions involving certain types of equipment financing and leasing
- Although clients may be the primary source of exclusion certification, additional steps may be advisable depending on the client's risk profile

A Clear Message: Managing Client Communication and the Customer Experience

Many attendees said a challenge posed by the CDD Final Rule is communicating it to clients and explaining how it may affect them.

Attendees want to make the customer experience pleasant and understandable. Several plan to emphasize the rule is a regulatory requirement, not a unilateral decision by the institution. Nevertheless, some feared clients might object or shop for an institution with less stringent policies.

There was a general consensus that communication will require repeat messaging, on different communication platforms. Some plan a separate mailer outlining the rule and its requirements. The letter may be included in account statements.

Others said letters might prove inadequate, and should be supplemented with branch signage and a social media or online outreach effort. A Frequently Asked Questions (FAQ) posted on bank websites would also be helpful.

There was a hope expressed by some for FinCEN to create a brochure as well, similar to one it produced regarding CTR requirements.

In addition, banks must provide talking points and FAQs to relationship managers and other personnel to ensure accurate responses to client queries.

Takeaways

- Communication with clients is essential and should be conducted on an ongoing basis utilizing multiple messaging platforms
- Creating informational tools such as FAQs for use by relationship managers and front-line personnel will support consistent messaging to clients
- The communication should emphasize the new rule is a regulatory requirement not an elective institutional policy

All Systems Go: Shared Ideas on Launching (and Completing) Implementation

With the CDD Final Rule deadline of May 11, 2018, attendees debated implementation strategies that minimize disruption to operations and clients.

The majority of attendees intend to roll out their new regime in the first quarter of 2018, although a handful plan to initiate it in the fourth quarter of 2017.

Most are doing so incrementally. Many plan to design new workflow processes to attain standardized compliance practices across the institution. Initially, they will operationalize new workflows with pilot projects or beta testing in conjunction with vendors. These small-scale tests will then be subjected to quality control reviews to spot systemic deficiencies. One specific area of interest will be identifying where increased automation might enhance operational efficiencies.

One group said the implementation process should focus on five types of risk: compliance risk; operational risks such as proper resource allocation; technology risks including data flow and record retention; strategic risks such as unpleasant customer experience; and reputational/legal risks.

Documentation of the testing process should be thorough, and senior management and the project management team must be briefed on the progress. Decisions to alter the original model, and why, should also be documented.

The estimated amount of time for this initial phase varied, though several believed it would take at least four months.

Following that, most plan a gradual rollout, such as by LOB. This will mitigate strains on available training resources.

For long-term quality control, planned approaches varied. Smaller institutions tended to favor random sampling of new account openings; larger ones anticipated moving toward 100% quality control review for high-risk clients.

Takeaways

- Institutions should reserve several months for implementing the rule, beginning with controlled testing and pilot projects
- Early tests should be reviewed to identify areas needing enhancement, while documenting all subsequent model alterations and the reasons for them
- System rollout will be incremental in most cases, to address unique issues facing different LOBs and ensure rational allocation of training and IT resources

Review and Conclusions

The day concluded with presentation of findings by facilitators and a review and analysis by Rick Small, ACAMS advisory board chairman and executive vice president and director, Financial Crimes Program at BB&T.

Mr. Small outlined the rule's four core elements of CDD. They are (1) customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships to develop a customer risk profile; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.

The first is already an AML program requirement. The third and fourth are implicitly required to comply with suspicious activity reporting requirements. The second is required under the new rule.

AML program requirements are being amended to explicitly include risk-based procedures for ongoing CDD, including understanding the nature and purpose of customer relationships for purposes of developing a risk profile. A risk profile refers to information gathered at account opening, to be used as a baseline against which customer activity is assessed for suspicious activity reporting. The profile may, but need not, include a system of risk ratings or customer categories.

The AML program amendments also include conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, update client information, including beneficial ownership.

When, in the course of normal monitoring, a financial institution detects information relevant to assessing client risk, including possible changes in beneficial ownership, it must update customer information including beneficial ownership. There is not a categorical requirement to update client information on a continuous or periodic basis. Updating is to be event-driven.

For identifying and verifying customers, current processes need not change. Current CIP requirements meet CDD standards.

However, understanding the nature and purpose of customer relationships may require evaluating current risk rating and enhanced due diligence (EDD) systems to ensure they meet minimum standards. A key issue is regulatory expectations for what information should be collected at account opening.

Existing ongoing monitoring processes and procedures should suffice in terms of maintaining and updating customer information, and identifying and reporting suspicious transactions. But institutions must adhere to regulatory expectations for "refreshing" beneficial ownership information.

Takeaways

- AML program requirements are being amended to explicitly include risk-based procedures for conducting ongoing CDD, to include understanding the nature and purpose of the customer relationship for purposes of developing a risk profile
- A risk profile refers to information gathered at account opening and should be used as a baseline against which customer activity is assessed for suspicious activity reporting
- There is no categorical requirement to update customer information, including beneficial ownership, on a continuous or periodic basis, but rather the updating requirement is event-driven and occurs as a result of normal monitoring

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This paper was written by Gregg Fields, CAMS, senior copywriter of ACAMS, based on his reporting from the forum and notes submitted by the facilitators.

Additional Resources

The following link is to FinCEN's Notice of Proposed Rulemaking on Customer Due Diligence Requirements for Financial Institutions, posted Aug. 4, 2014

https://www.regulations.gov/document?D=FINCEN-2014-0001-0001

The following link is to FinCEN's Preliminary Regulatory Impact Assessment for the CDD Final Rule, posted December 2015

https://www.fincen.gov/sites/default/files/shared/CDD_RIA.pdf

The following link is to FinCEN's issuance of the final rule, posted May 11, 2016

https://www.federalregister.gov/documents/2016/05/11/2016-10567/customer-due-diligence-requirements-for-financial-institutions

The following link is to an FAQ on the rule posted by FinCEN on July 19, 2016

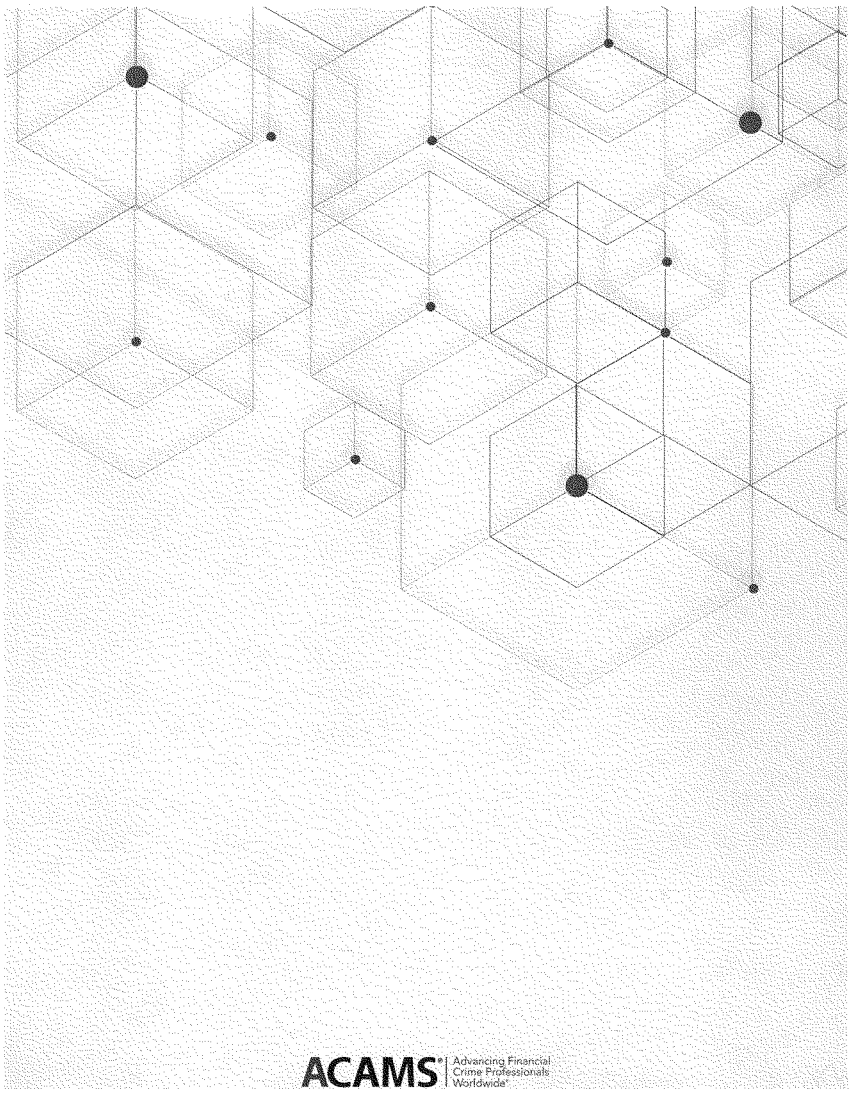
https://www.fincen.gov/sites/default/files/2016-09/FAQs_for_CDD_Final_Rule_%287_15_16%29.pdf

The following link is to a free ACAMS webinar, The CDD Final Rule: Responding Effectively to Implementation Hurdles, conducted on May 12, 2017

http://www.acams.org/webinar-2018-cdd-final-rule/

"ACAMS KYC CDD - Intermediate" certificate course builds research skills for complex cases, shell companies, and ultimate beneficial owners.

http://www.acams.org/kyc-cdd-intermediate-training/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